

**STATE BOARD OF ELECTIONS
STATE OF ILLINOIS**

2329 S. MacArthur Blvd.
Springfield, Illinois 62704-4503
217/782-4141 TTY: 217/782-1518
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James R. Thompson Center
100 W. Randolph St, Ste 14-100
Chicago, Illinois 60601-3232
312/814-6440 TTY: 312/814-6431
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EXECUTIVE DIRECTOR
Rupert T. Borgsmiller

BOARD MEMBERS
William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers
Betty J. Coffrin
Ernest L. Gowen
Judith C. Rice
Bryan A. Schneider
Charles W. Scholz

AGENDA
State Board of Elections
Sitting as the Duly Authorized
State Officers Electoral Board
Wednesday, January 30, 2013
3:00 p.m.

James R. Thompson Center – Suite 14-100
Chicago, Illinois
and via videoconference
2329 S. MacArthur Blvd.
Springfield, Illinois

Call State Board of Elections to order.

1. Approval of the minutes from the January 18 special meeting.
2. Recess the State Board of Elections and convene as the State Officers Electoral Board.
3. Approval of the minutes from the January 18 SOEB meeting.
4. Consideration of objections to candidate nominating petitions for the February 26, 2013 Special Primary Election in the 2nd Congressional District:
 - a. *Cochrane & Moore v. Washington*, 13SOEBSP500 – objection withdrawn;
 - b. *Holloway & Foster v. Beale*, 13SOEBSP501.
5. Consideration of objections to candidate nominating petitions for the April 9, 2013 Consolidated Election:
 - a. *Zahm v. Holt*, 13SOEBCE100;
 - b. *Zahm v. Wilcoxon*, 13SOEBCE101;
 - c. *Zahm v. Kested*, 13SOEBCE102;
 - d. *Zahm v. Lodico*, 13SOEBCE103;
 - e. *Zahm v. Dalton*, 13SOEBCE104.
6. Recess the State Officers Electoral Board until call of the Chairman.
7. Reconvene as the State Board of Elections.
8. Consideration of complaint following public hearing - *Hajer-O'Connor v. Committee to Elect Robert Lovero*, 13CD003.
9. Other business.
10. Adjourn until February 20, 2013 at 10:30 a.m. or call of the Chairman, whichever occurs first.

STATE BOARD OF ELECTIONS

Special Board Meeting
Friday, January 18, 2013

MINUTES

PRESENT:

William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers, Member
Betty J. Coffrin, Member
Ernest L. Gowen, Member
Bryan A. Schneider, Member
Charles W. Scholz, Member

ABSENT:

Judith C. Rice, Member

ALSO PRESENT:

Rupert Borgsmiller, Executive Director
Jim Tenuto, Assistant Executive Director
Steve Sandvoss, General Counsel
Rebecca Glazier, Asst. to Executive Director

The meeting convened at 3:00 p.m. via videoconference with Members Gowen, Schneider and Chairman McGuffage present in Chicago; Members Byers, Scholz and Vice Chairman Smart present in Springfield; and Member Coffrin connected via telephone. Member Rice was absent.


The Chairman opened the meeting by leading everyone in the Pledge of Allegiance to the flag.

Member Schneider moved to recess the State Board of Elections and convene as the State Officers Electoral Board. Member Scholz seconded the motion which passed unanimously.

The meeting recessed at 3:01 p.m. and reconvened at 3:11 p.m.

With there being no further business before the Board, Vice Chairman Smart moved to adjourn until January 30, 2012 at 3:00 p.m. or call of the Chairman, whichever occurs first. Member Scholz seconded the motion which passed unanimously. The meeting adjourned at 3:14 p.m.

Respectfully submitted,


Rebecca L. Glazier, Asst. to Executive Director


Rupert T. Borgsmiller, Executive Director

STATE OFFICERS ELECTORAL BOARD

Friday, January 18, 2013

MINUTES

PRESENT:

William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers, Member
Betty J. Coffrin, Member
Ernest L. Gowen, Member
Bryan A. Schneider, Member
Charles W. Scholz, Member

ABSENT:

Judith C. Rice, Member

ALSO PRESENT:

Rupert Borgsmiller, Executive Director
Jim Tenuto, Assistant Executive Director
Steve Sandvoss, General Counsel
Rebecca Glazier, Assistant to Executive Director

The meeting convened at 3:01 p.m. via videoconference with Members Gowen, Schneider and Chairman McGuffage present in Chicago; Members Byers, Scholz and Vice Chairman Smart present in Springfield; and Member Coffrin connected via telephone. Member Rice was absent.

The General Counsel called the cases and accepted appearances to objections to candidates nominating petitions for the February 26, 2013 Special Primary Election in the 2nd Congressional District.

The General Counsel called the cases and accepted appearances to objections to candidate nominating petitions for the April 9 Consolidated Election for Regional Offices for School Trustees.

Vice Chairman Smart moved to approve the Rules of Procedure. Member Byers seconded the motion which passed by roll call vote of 7-0.

The General Counsel then submitted a memo assigning hearing examiners to the seven cases. The parties were directed to meet with their respective hearing examiner and proceed to case management conferences. Member Scholz moved to approve the appointment of hearing examiners and the assignment of cases. Vice Chairman Smart seconded the motion which passed unanimously.

With there being no further business Member Schneider moved to reconvene as the State Board of Elections. Member Byers seconded the motion which passed unanimously. The meeting recessed at 3:11 p.m.

Respectfully submitted,



Rebecca L. Glazier, Asst. to Executive Director



Rupert T. Borgsmiller, Executive Director

Christine Cochrane and John V. Moore

Objectors

-V-

Joyce W. Washington

Candidate

13 SOEB SP 500

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on January 18, 2013 and assigned to this Hearing Officer. A case management conference was held on said date. Objector Cochrane appeared pro se and the candidate appeared through counsel David Epstein. Objector Moore did not appear. The parties were given the opportunity to file preliminary motions and requests for subpoenae. No motions or requests were filed. A records examination was conducted and concluded on January 22, 2013. On January 24, 2013, both objectors, via e-mail correspondence, withdrew their Objectors' Petition. Copies of the e-mailed withdrawals are attached hereto.

RECOMMENDATION

In light of the withdrawal of the Objectors' Petition, it is my recommendation that the matter be dismissed and that the nominating papers of Candidate **Joyce W. Washington** be deemed **valid**. It is my further recommendation that the name of Candidate **Joyce W. Washington** for the office of Representative in Congress for the 2nd Congressional District **be** printed on the ballot at the February 26, 2013 Special Primary Election.

Respectfully submitted,

Barbara Goodman /s/

Barbara Goodman

Hearing Officer

1/25/13

Harrington, Bernadette

Subject: FW: withdrawal

From: **Chris Cochrane** <ccochrane1@live.com>

Date: Thu, Jan 24, 2013 at 3:39 PM

Subject: withdrawal

To: barb@barbgoodmanlaw.com, Law60600@aol.com

Ms. Goodman, and Mr. Epstein,

I am withdrawing my objection to the petition of Joyce Washington as a candidate for U. S. Representative in the 2nd Congressional District of Illinois. It became apparent today that we would not have enough evidence to support our claim. While it is abundantly apparent that there were more than sufficient illegal signatures and fraudulent petitions, we neither had the time, nor the manpower, to prove our case. Therefore, we decided not to waste the board's time, your time, or our time.

You were both very generous in your information to me, and your willingness to cooperate. I do appreciate it.

As a sidebar, my husband is an attorney, and he said one "attorney" in a family is more than enough! We also know board member Ernie Gowen, though I made no movement to acknowledge that at the hearing, as I deemed it to be inappropriate. But, do say hello to him for me, and for my husband, Gordon Cochrane.

Thank you for everything.

Christine Cochrane

--

Barbara B. Goodman

Attorney at Law

400 Skokie Boulevard

Suite 380

Northbrook, IL 60062

Tel: 224-639-1400

Fax: 224-330-1356

Cell: 847-833-6844

e-Mail: barb@barbgoodmanlaw.com

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Cochrane & Moore v. Washington

Inbox x



John V. Moore <johnvmoore@gmail.com> 6:04 PM (16 hours ago)

to Law60600, me, Rudi, Chris

Please be advised that I am withdrawing my objection to Joyce Washington's nominating papers.

John V. Moore
5500 South South Shore Drive
Apt 1810
Chicago, IL 60637

John V. Moore
jvmoore@gestaltonline.com
johnvmoore@gmail.com

Holloway and Foster v. Beale
13 SOEB SP 501

Candidate: Anthony A. Beale

Office: Representative in Congress, 2nd District

Party: Democrat

Objector: Valerie Holloway and Laresse Foster

Attorney For Objector: Andrew Finko

Attorney For Candidate: James Nally and Burt Odelson

Number of Signatures Required: not less than 1,256

Number of Signatures Submitted: 3,889

Number of Signatures Objected to: 3,373

Basis of Objection: The Nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer's Address Missing or Incomplete,".

Dispositive Motions: Candidate: Motion to Strike and Dismiss Objectors' Petition; Response to Objectors' Rule 9 Motion. Objector: Response to Motion to Strike; Rule 9 Motion including Motion for Summary Judgment and Sur-Response to Candidate's Motion to Strike

Binder Check Necessary: Yes

Hearing Officer: Kelly M. Cherf

Hearing Officer Findings and Recommendation: The Records Examination commenced and was completed on January 23, 2013. Both parties were present at the Records Examination. The Candidate needs 1,256 valid signatures to be placed on the ballot. Following the Records Examination, objections to 2,291 signatures were sustained and objections to 1,047 signatures were overruled, leaving the Candidate with 1,598 valid signatures, which is 342 more than the required minimum number of signatures for placement on the ballot.

Objectors filed a Rule 9 Motion, arguing the existence of a pattern of fraud within the Candidate's nominating papers and also alleging an equal protection violation. Regarding the pattern of fraud allegation, Objectors argue that their analysis of the Records Examination shows that 187 out of the 275 sheets of Candidate's nominating papers contain 50% or more invalid signatures, revealing serious questions about the veracity and validity of each and every circulators' affidavit. Based on this, they argued further that any petition sheet containing 50% or more invalid signatures should be stricken in its entirety. Regarding the equal protection violation, Objectors allege that the Election Code imposes different standards for the number of signatures a candidate can submit. Established party candidates have no maximum number of signatures imposed upon them while independent candidates are capped in terms of the number of signatures they can submit.

The Candidate filed a response to the two arguments contained within Objectors' Rule 9 Motion. In response to the pattern of fraud argument, Candidate argues that the pattern of fraud objection set forth in Objectors' Petition fails to comply with Section 10-8 requirements because there are no specific allegations or objections to any identified circulator and Objectors' reliance on the statistics of a records examination alone to prove a pattern of fraud is insufficient under the applicable law. In response to the equal protection allegation, Candidate states that this allegation was not included in the Objectors' Petition, and even if the issue was sufficiently plead, the Electoral Board does not have the authority to rule on constitutional arguments.

Regarding the pattern of fraud argument, the Hearing Officer recommends that the Rule 9 Motion be denied for two reasons. First, in arguing pattern of fraud based upon circulators, Section 10-8 of the Election Code requires that the objections be specific and fully state the nature of the objections. Case law has held that specificity is required in order to put the candidate on notice of the purported deficiency of his or her nominating petitions so that the candidate has an opportunity to prepare a defense. In the instant case, the Objectors' Petition fails to identify sheets or lines that Objectors are now contending demonstrate a pattern of fraud, and thus the objection deprives Candidate of the opportunity to prepare a defense. Furthermore, once filed, an Objectors petition cannot be amended. Therefore, the Rule 9 Motion should be denied.

Second, the Objectors have failed to meet their burden of proof to contest Candidate's nominating papers on the basis of fraud. According to case law, fraud must be affirmatively established and proved by clear and convincing evidence. In order to strike signatures based on a pattern of fraud, there must be some evidence beyond the results of the records examination that the circulator intentionally filed false affidavits or had guilty knowledge regarding the affidavits. Objectors rely upon the well-known pattern of fraud cases; however, in all three cases there was direct evidence of fraud by way of live testimony. Here, no such evidence has been presented and Objectors rely solely upon the results of the Records Examination; therefore, this is insufficient to establish a pattern of fraud and the Rule 9 Motion should be denied.

Regarding the allegation of an equal protection violation, the Hearing Officer recommends that Objectors' Rule 9 Motion be denied. First, the issue was not pled in the Objectors' Petition and therefore fails to comply with Section 10-8. Second, even if the objection was properly made, the Electoral Board does not have the authority to decide constitutional issues.

For the foregoing reasons, the Hearing Officer recommends that the Board: i) deny the Objectors' Rule 9 Motion and Motion for Summary Judgment and overrule the Objectors' Petition; ii) find that after the Records Examination, Candidate is 342 signatures above the minimum requirement to have his name placed on the ballot; and iii) order that the name Anthony A. Beale be certified for the ballot as a candidate for the Office of Representative in Congress for the 2nd Congressional District for the State of Illinois to be voted on at the February 26, 2013 Special Primary Election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
THE NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF
REPRESENTATIVE IN CONGRESS FOR THE 2ND
CONGRESSIONAL DISTRICT IN THE STATE OF ILLINOIS

VALERIE HOLLOWAY and)	
LARESSE FOSTER,)	
)	
Petitioner-Objectors,)	
)	
v.)	Case No. 13-SOEB-SP-501
)	
ANTHONY A, BEALE,)	
)	
Respondent-Candidate.)	

HEARING OFFICER’S FINDINGS AND RECOMMENDATIONS

This matter coming before the State Board of Elections as the duly qualified Electoral Board and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Findings and Recommendations:

I. PRELIMINARY FACTS

The Candidate, Anthony A. Beale (the “Candidate”), timely filed his Nomination Papers with the State Board of Elections to qualify as a Candidate for the office of Representative in Congress for the Second Congressional District in the State of Illinois to be voted for at the special consolidated primary election on February 26, 2013.

On January 14, 2013, the Objectors, Valerie Holloway and Laresse Foster (the “Objectors”), timely filed a verified Objectors’ Petition. In the Petition, the Objectors argue that the Candidate’s Nomination Papers are invalid and/or insufficient as the petition sheets contain fewer than the requisite 1,256 signatures because they contain the following deficiencies: a) signers not registered at address shown; b) signatures that are not genuine; c) signers residing outside the district; d) names of persons for whom the addresses are missing or incomplete; e) names of persons who signed the petition more than once; and f) other deficiencies as indicated in the “other” column of the Appendix-Recapitulation including “info unreadable,” “canceled,” “inactive,” “scratched off,” “not legible,” “no signature” and “no clip.” Attached to the Objector’s Petition is an Appendix-Recapitulation identifying the specific objections for each signature line on the Candidate’s Nomination Papers. Objectors also allege that there are deficiencies with regard to the circulators and their signatures. However with the exception of sheet 179 of Appendix-Recapitulation,¹ the circulator deficiencies are not specifically identified

¹ Sheet 179 of the Appendix Recapitulation states that the Circulator did not sign Petition Sheet No. 179 and in the “other” column, it states “circulator signature missing.”

by sheet number in the Appendix- Recapitulation. The Objectors also argue that the Nomination Papers contain sheets which demonstrate a pattern of fraud.

An initial hearing and case management conference on this matter was held on January 18, 2013. Andrew Finko appeared on behalf of the Objectors. James Nally appeared on behalf of the Candidate. Burton Odelson also is an attorney for the Candidate.

At the hearing, the Candidate presented his Motion to Strike and Dismiss Objectors' Petition ("Motion to Strike") which was previously filed with the Board of Elections. In the Motion to Strike, the Candidate argues that Objectors' Petition should be dismissed on the grounds it is typical of a shotgun objection. The Objectors filed a Response. On January 21, 2013, I served my Recommendation on the Motion to Strike whereby I recommended that the Motion to Strike be denied. A copy of the Recommendation is attached to this report. On January 22, 2013, the parties presented argument before the Electoral Board on the Motion to Strike. The Electoral Board denied the Motion.

The Records Examination commenced and was completed on January 23, 2013. Both parties were present at the Records Examination. The Candidate needs 1,256 signatures to be on the ballot. On January 23, 2013, the parties were notified of the Records Examination results via an email from me which attached a spreadsheet showing the results. The January 23, 2013 spreadsheet (attached hereto) shows the following: a) the Candidate submitted 3889 signatures; b) the objections to 2291 signatures were sustained; c) the objections to 1047 signatures were overruled; d) leaving 1,598 valid signatures which is 342 more than the required number of signatures.

A case management hearing was held telephonically on January 25, 2013. Counsel for the Objectors represented that the Objectors intended to file a Rule 9 Motion. Counsel for Candidate was directed to file the Candidate's Response to the Rule 9 Motion by January 26, 2013. Counsel for both parties agreed that a hearing on Objectors' Rule 9 Motion was not necessary given that, other than the Nomination Papers, the Objectors Petition and the results from the Records Examination, no additional evidence would be submitted in support of the Rule 9 Motion.

On January 25, 2013, the Objectors filed their "Rule 9 Motion, Motion for Summary Judgment and Sur-Response to Candidate's Motion to Strike" (hereinafter referred to as the "Rule 9 Motion") which consists of two arguments. The first argument is a pattern of fraud argument which relies principally upon the results of the Records Examination and an "Analysis" which is attached as Exhibit A to the Objectors' Rule 9 Motion. The gist of the Objectors' argument is that after the Records Examination, 187 out of the 275 sheets of the Candidate's Nomination Papers contain 50% or more invalid signatures, and thus, there are "very serious questions about the veracity and validity of each and every circulators' affidavit," (Rule 9 Motion at p. 1); therefore, any petition sheet which contains 50% or more invalid signatures should be stricken in its entirety. (Rule 9 Motion at p. 2). For their second argument, Objectors allege there is an equal protection violation in that the Election Code imposes two different standards for the number of signatures on established party candidates and

independents in that there is no maximum number of signatures imposed upon established party candidates but there is a maximum number of signatures for independents.

On January 26, 2013, the Candidate filed his Response. For his Response, the Candidate argues that the pattern of fraud objection set forth in the Objectors' Petition fails to comply with 10 ILCS 5/10-8 in that there are no specific allegations or objections to any identified circulator in the Objectors' Petition or the Objectors' Appendix-Recapitulation sheets and even if the objection was properly pled, Objectors reliance on the statistics of a records examination alone to prove pattern of fraud is insufficient under the applicable law. With regard to the equal protection argument, the Candidate points out that this argument was not alleged in Objectors' Petition, and the Electoral Board does not and cannot make rulings on constitutional arguments.

II. RECOMMENDATION ON THE RULE 9 MOTION

A. The Pattern of Fraud Argument

1. The Pattern of Fraud Objection Fails to Comply with 10 ILCS 5/10-8

In their Petition and for their pattern of fraud argument, the Objectors allege the following:

Objectors state that the Nomination Papers contain petition sheets purportedly circulated by individuals whose petition sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every signature on every sheet purportedly circulated by said individuals are invalid, and should be invalidated, in order to protect the integrity of the electoral process, in accordance with the principles set forth in the decisions of *Canter v. Cook County Officers Electoral*, 170 Ill. App. 3d 364, 523 N.E. 2d 1299 (1st Dist. 1988); *Huskey v. Municipal Officers Electoral Bd. For Village of Oak Lawn*, 156 Ill. App. 3d 201, 509 N.E.2d 555 (1st Dist. 1987); *Fortas v. Dixon*, 122 Ill. App. 3d 697, 462 N.E. 2nd 615 (1st Dist. 1984), et al.

Objectors state that the Nomination Papers contain petition sheets for which the circulator's affidavit is false because the purported circulator did not actually obtain, solicit or witness the affixing of each voter's signature to the those sheets in his/her presence, and every signature on those sheets should be deemed invalid and stricken because the circulator signed a false affidavit in violation of Illinois law.

(Objectors' Petition at ¶¶ 14, 15; Rule 9 Motion at p. 3).

In arguing pattern of fraud based upon circulators whose petition sheets demonstrate a pattern of fraud, the objectors must identify in their petition the circulators and/or petition sheets for which the objectors are basing their objection. The Election Code requires that the objections be specific and state fully the nature of the objections. 10 ILCS 5/10-8. See also *Cruz v. Neely*, 11-EB-MUN-058, CBEC, January 3, 2012; *Davis v. Hendon*, 02 EB-SS-09, CBEC, January 31,

2002. By failing to identify the circulators or petitions sheets that demonstrate the pattern of fraud, the objection lacks sufficient specificity to put the candidate on notice of the purported deficiency and as such deprives the candidate of an opportunity to prepare for his defense. *Cruz v. Neely*, 11 EB-MUN-058, CBEC, January 3, 2012. *See also Davis. Hendon*, 02 EB-SS-09, CBEC, January 31, 2002 (“If such a practice was permitted, it would result in placing candidate in the untenable position of going through the exercise of participating in a records examination knowing that he will have more than a sufficient number of signatures to remain on the ballot and then having to guess at what further evidence the objector intends to offer to invalidate the nominating papers.”).

In the instant case, the pattern of fraud objection in the Objectors’ Petition fails to reference sheets or lines for which the Objectors are now contending demonstrate a pattern of fraud and as such deprives the Candidate of the opportunity to prepare a defense.² Objectors cannot now amend their Petition by claiming that “each and every circulator that submitted petition signatures that contained more than 50% invalid signatures submitted a false circulator’s affidavit . . . constituting a pattern of fraud warranting striking of all Candidate’s signatures.” (Rule 9 Motion at p. 3). The Election Code does not authorize amendments to objections. *See Reyes v. Bloomingdale Township Electoral Board*, 265 Ill. App. 3d 69, 72, 638 N.E. 2d 782, 784, *vacated on other grounds*, 265 Ill. App. 3d 69, 640 N.E. 2d 956 (2nd Dist. 1994).

Because the pattern of fraud objection set forth in the Objectors’ Petition is not sufficiently pled and fails to provide the Candidate with sufficient notice pursuant to 10 ILCS 5/10-8, I recommend that the pattern of fraud argument set forth in the Rule 9 Motion be denied.

2. Objectors Fail to Meet their Burden of Proof on the Pattern of Fraud Objection

Notwithstanding the foregoing recommendation, the Objectors’ Rule 9 Motion also should be denied because the Objectors have failed to meet their burden of proof to contest the Candidate’s Nomination Papers based upon fraud. The Objectors’ only evidence for the pattern of fraud allegation is the results of the Records Examination and the demonstrative exhibit attached as Exhibit A to the Rule 9 Motion.

Fraud must be affirmatively established and proved by clear and convincing evidence. *Delk v. Brooks*, 07-EB-ALD-086, CBEC, January 2007; *Prince v. Douyon*, 06-EB-RGA-10, CBEC, January 26, 2006. I am not aware of any case in which an Illinois electoral board sustained a pattern of fraud objection based only upon the records examination statistics and without additional evidence such as live testimony, affidavits and documents. *Id.* *See also McCord v. Penn*, 02 EB-RGA-15, CBEC, January 31, 2002 (“more proof is required than some false signatures on a sheet”). Citing to *In re Petition for Removal of Frank Bower*, 41 Ill. 2d 277, 242 N.E. 2d 252 (1968), the Chicago Electoral Board in *Prince* held:

² Appendix-Recapitulation Sheet No. 179 does state that the circulator’s signature for Petition Sheet No. 179 is missing. However, based on the Objectors’ own analysis, the Records Examination resulted in over 50% valid signatures on Petition Sheet No. 179. Moreover, there does appear to be a circulator signature for that petition sheet, and the Objectors have not submitted any evidence to the contrary.

[T]here must be some evidence that the circulator corruptly or intentionally filed false affidavits or had 'guilty knowledge' regarding the affidavits. Fraud or guilty knowledge is not imputed to the circulator but must be affirmatively established. In other words, in order to strike signatures based on a pattern of fraud, some evidence beyond the results of the records examination is necessary.

Prince v. Douyon, 06-EB-RGA-10, CBEC, January 26, 2006. See also *Crossman v. Board of Election Commissioners of the City of Chicago*, 2012 Ill. App. (1st Dist) 120291, February 29, 2012 (referring to *Harmon v. Town of Cicero Municipal Officers Electoral Board*, 371 Ill. App. 3d 1111, 1116 (2007), the Court stated, "we do not hold that the Board is required to strike an entire sheet of signatures when a certain percentage of the signatures therein are found to be 'not genuine.'").

In their Rule 9 Motion, Objectors rely exclusively upon *Fortas*, *Huskey* and *Canter* – the well-known and often cited pattern of fraud cases. However, all three cases are easily distinguishable from the instant case. In *Fortas*, *Huskey* and *Canter*, there was direct evidence by way of live testimony. In the instant case, no such evidence has been presented by the Objectors. The Objectors rely only upon the results of the Records Examination and as set forth above, this is insufficient to establish a pattern of fraud.

B. The Equal Protection Argument

I recommend that the Objectors' equal protection argument in their Rule 9 Motion also be denied for two reasons. First, the objection was not made in their Petition and therefore fails to comply with 10 ILCS 5/10-8. Second, even if the objection was properly made, the Electoral Board does not have the authority to decide constitutional issues. *Oberg v. Schreiner*, 96 EB-NPP-001, CBEC, September 10, 1996 (citing to *Phelan v. County Officers Electoral Board*, 240 Ill. App. 3d 368, 608 N.E. 2d 215 (1st Dist. 1992) and *Wiseman v. Elward*, 5 Ill. App. 3d 249, 283 N.E. 2d 282 (1st Dist. 1972)).

III. CONCLUSION

For the foregoing reasons, I recommend that the Board: i) deny the Objectors' Rule 9 Motion and Motion for Summary Judgment and overrule the Objectors' Petition; ii) find that after the Records Examination, the Candidate is 342 signatures above the minimum requirement to have his name placed on the ballot; and iii) order that the name Anthony A Beale be certified for the ballot as a candidate for the Office of Representative in Congress for the 2nd Congressional District for the State of Illinois to be voted on at the special primary election to be held on February 26, 2013.

Dated: January 28, 2013



Kelly McCloskey Cherrf
Hearing Examiner

Kelly McCloskey Cherf
Hearing Officer

Case Name: Holloway & Foster vs. Beale

Case Number: 13SOEBSP501

Office: 2nd Congressional

Signatures Required: 1,256

PAGE NUMBER	NUMBER OF SIGNATURES	PAGE NOTES	NUMBER SUSTAINED	NUMBER OVERRULED
1	15		9	4
2	15		5	9
3	15		5	9
4	15		6	6
5	15		7	7
6	15		11	4
7	14		12	2
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120	15
121	15
122	15
123	15
124	15
125	15
126	15
127	15
128	15

no recap sheet

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11	3
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10	4
9	4
10	4
8	6
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15	0
9	2
13	2
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10	2
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9	1
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129	15
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138	15
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180	15
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183	15
184	15
185	15
186	15
187	14
188	1
189	12
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192	15
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202	11
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217	8
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219	9
220	9
221	9
222	10

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269	12

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15	0
9	2

270	15	9	3
271	15	8	6
272	15	10	3
273	12	1	1
274	12	3	4
275	15	8	4
	3889	2291	1047

Tot I Sign tures submitted:

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Tot I Sign tures fter Ex m:

1598

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON NOMINATION OBJECTIONS TO
THE NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN CONGRESS FOR THE 2nd
CONGRESSIONAL DISTRICT OF THE STATE OF ILLINOIS

VALERIE HOLLOWAY and
LARESSA FOSTER,

Objectors,

v.

ANTHONY A. BEALE,

Candidate.

No. 7272-11-13

ORIGINAL ON FILE AT
STATE BD OF ELECTIONS
ORIGINAL TIME STAMPED
AT 7/27/11 5:11 PM

OBJECTORS' PETITION

1. Objector, Valerie Holloway, resides at 6210 S. Kimbark, Chicago, IL 60637, in Cook County, and is an eligible, qualified and duly registered voter at this address, and that her interest in filing the following objections is that of a citizen desirous of seeing that the laws governing the filing of nomination papers for a candidate for election to the office of Representative in Congress for the 2nd Congressional District of the State of Illinois are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

2. Objector Laressa Foster, resides at 14220 S. Wallace, Riverdale, IL 60827, in Cook County, and is an eligible, qualified and duly registered voter at this address, and that her interest in filing the following objections is that of a citizen desirous of seeing that the laws governing the filing of nomination papers for a candidate for election to the office of Representative in Congress for the 2nd Congressional District of the State of Illinois are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

3. Objectors, Valerie Holloway and Laressa Foster, ("Objectors") file their objections to the nomination papers filed by Anthony A. Beale ("Candidate") who submitted nomination papers as a candidate of the Democratic Party seeking the Democratic Party's nomination as Representative in Congress for the 2nd Congressional District for the State of Illinois ("Nomination Papers"), because the Nomination Papers are insufficient in fact and law, and do not conform with the requirements Illinois laws governing the filing of Nomination Papers.

4. Pursuant to Illinois law, the Candidate's Nomination Papers must contain the signatures of not fewer than 1,256 duly qualified, registered and legal voters of the 2nd Congressional District for the State of Illinois, and gathered by duly qualified circulators who personally attest under oath to the manner in which the signatures were collected, as prescribed by law.

5. Candidate submitted petition signature sheets purportedly containing in excess of 1,256 signatures of persons purporting to nominate Candidate.

6. Objectors further state that the aforesaid nomination papers contain the names of numerous persons who are not in fact duly qualified, registered, and legal voters at the addresses shown opposite their names in the 2nd Congressional District of the State of Illinois and their signatures are therefore invalid, as more fully set forth in the Appendix Recapitulation under the column designated "SIGNER NOT REGISTERED AT ADDRESS SHOWN (A)," attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

7. Objectors state that the said nomination papers contain the names of numerous persons who did not sign the said nomination papers in their own proper persons, and that the said signatures are not genuine, as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNATURE NOT GENUINE (B)," attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

8. Objectors further state that the said nomination papers contain the names of numerous persons who have signed said petition but who are not, in fact, duly qualified, registered, and legal voters at addresses that are located within the boundaries of the 2nd Congressional District of the State of Illinois as shown by the addresses they have given on the petition, as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNER RESIDES OUTSIDE DISTRICT (C)," attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

9. Objectors further state that various purported signatures are legally defective and deficient in that the address shown next to said voter's name is incomplete, as more fully set forth in the Appendix-Recapitulation, under the column designated "SIGNER'S ADDRESS MISSING OR INCOMPLETE (D)" attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

10. Objectors further state that said nominating petition contains the signatures of various individuals who have signed the petition more than once, and such duplicate signatures are invalid, as more fully set forth in the Appendix-Recapitulation, under the column designated "SIGNER SIGNED PETITION MORE THAN ONCE AT SHEET/LINE INDICATED (E)," attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

11. Objectors further state that said nominating petition contain other defects and deviations from the requirements of the Illinois Election Code as more fully set forth in the Appendix-Recapitulation, under the column designated "OTHER (F)," attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

12. Objectors state that various circulators of the Candidate's petition sheets did not comply with Illinois law, as more fully set forth in lower portion of each sheet of the Appendix-Recapitulation that is attached hereto and made a part hereof, including but not limited to circulator being younger than 18 years of age, circulator did not sign petition sheet, circulator does not reside at address shown, circulator is not a U.S. Citizen, circulator's signature is not genuine, circulator's address incomplete, circulator circulated for an opposing candidate or a candidate of another political party, circulator's affidavit not properly notarized, purported circulator did not circulate sheet, circulator did not appear before notary, sheet was not properly notarized, dates of circulation were not given, dates of circulation incomplete, and otherwise as stated on the lower portion of the Appendix-Recapitulation sheets, and that such failure(s) to comply with Illinois law mandate(s) the invalidation of each and every signature on each signature petition sheet where a circulator or a notary failed to comply with Illinois law.

13. Objectors state that various persons purporting to be duly qualified notaries of the Candidate's petition sheets did not comply with Illinois law, as more fully set forth in the Appendix-Recapitulation that is attached hereto and made a part hereof, including but not limited to purported notary did not properly notarize circulator's signature in accordance with Illinois law, notary commission was not valid or expired, and otherwise as stated on the lower portion of the Appendix-Recapitulation sheets, and that such failure(s) to comply with Illinois law mandate(s) the invalidation of each and every signature on each signature petition sheet where a circulator or a notary failed to comply with Illinois law.

14. Objectors state that the Nomination Papers contain petition sheets purportedly circulated by individuals whose petition sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every signature on every sheet purportedly circulated by said individuals are invalid,

and should be invalidated, in order to protect the integrity of the electoral process, in accordance with the principles set forth in the decisions of *Canter v. Cook County Officers Electoral*, 170 Ill.App.3d 364, 523 N.E.2d 1299 (1st Dist. 1988); *Huskey v. Municipal Officers Electoral Bd. for Village of Oak Lawn*, 156 Ill.App.3d 201, 509 N.E.2d 555 (1st Dist., 1987); *Fortas v. Dixon*, 122 Ill.App.3d 697, 462 N.E.2d 615 (1st Dist. 1984), et al.

15. Objectors state that the Nomination Papers contain petition sheets for which the circulator's affidavit is false because the purported circulator did not actually obtain, solicit or witness the affixing of each voter's signature to those sheets in his/her presence, and every signature on those sheets should be deemed invalid and stricken because the circulator signed a false affidavit in violation of Illinois law.

16. Objectors state that all signatures that do not satisfy the requirements of Illinois law should be stricken and disregarded.

17. Objectors state that Candidate has fewer than 1,256 valid, duly qualified and legal signatures of voters from the 2nd Congressional District, signed in their own proper person with proper addresses, which is fewer than the minimum number of signatures required by Illinois law, as set forth in the Objectors' Petition, including the Appendix-Recapitulation that is attached hereto and incorporated and made a part of the Objectors' Petition as if expressly stated herein.

WHEREFORE. Objectors respectfully request (a) a hearing on the objections set forth herein, (b) an examination by the duly constituted Electoral Board of the of the official records of the voters of the 2nd Congressional District for the State of Illinois, (c) a determination that the nomination papers of Anthony A. Beale, as the Democratic Party's candidate for the Office of Representative in Congress for the 2nd Congressional District for the State of Illinois are insufficient in fact and law and be stricken, and (d) a decision declaring that the name of Anthony A. Beale **NOT BE PRINTED** on the Democratic Party special election primary ballot for the special primary election to held on February 26, 2013.

Respectfully submitted:

By:


Attorney for Objectors

Andrew Finko PC
Attorney at Law
PO Box 2249
Chicago, IL 60690-2249
Tel (773) 480-0616
Fax (773) 453-3266

State of Illinois)

County of Cook)ss
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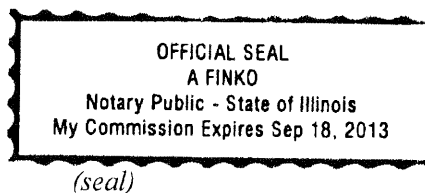
VERIFICATION

The undersigned as Objector, first being duly sworn on oath, under oath deposes and says that she has read this foregoing OBJECTORS' PETITION and that the statements therein are true and correct to the best of her knowledge, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true and correct.

X Valerie Holloway
Objector

Subscribed and Sworn to before
me this 14th day of January 2013.

A. Finko
Notary Public



State of Illinois)

County of Cook)ss
)

VERIFICATION

The undersigned as Objector, first being duly sworn on oath, under oath deposes and says that she has read this foregoing OBJECTORS' PETITION and that the statements therein are true and correct to the best of her knowledge, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true and correct.

X Laraine Foster
Objector

Subscribed and Sworn to before
me this 14th day of January 2013.

A. Finko
Notary Public



BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON NOMINATION OBJECTIONS TO
THE NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN CONGRESS FOR THE 2nd
CONGRESSIONAL DISTRICT OF THE STATE OF ILLINOIS

VALERIE HOLLOWAY and)	
LARESSE FOSTER,)	
Objectors,)	
v.)	No. 2013-SOEB-SP-501
)	
ANTHONY A. BEALE,)	
Candidate.)	

**Objectors' Rule 9 Motion, Motion for Summary Judgment
and Sur-Response to Candidate's Motion to Strike**

Now come the Objectors, through counsel, and file their Rule 9 Motion, Motion for Summary Judgment, and Sur-Response to Candidate's Motion to Strike, as follows.

A. *Introduction.*

Although the Candidate submitted over three times the number of signatures required, over two-thirds of his signature sheets are, in large part fraudulent, or bogus filler names/signatures, interspersed among the valid signatures. That is, 187 out of 275 sheets¹ submitted (or 68% of all sheets) contain 50% or more invalid signatures², raising very serious questions about the veracity and validity of each and every circulators' affidavit.

1 Although each of the Candidate's 275 petition sheets were reviewed and found to be lacking, the Objectors' Appendix-Recapitulation for sheet 100 was either misplaced or lost, and not part of the Objectors' Petition, though indeed, Objectors reviewed and prepared challenges to those signatures as well. This point is made so that the Electoral Board does not rely upon sheet 100 as being the one "perfect" sheet of 15 signatures among the 275 submitted.

2 150 out of 275 sheets having 15 signatures contain 8 or more sustained objections (55%) per page. 37 out of 275 sheets with fewer than 15 signatures have over 50% of the signatures per page found to be invalid. Please see Exhibit A, Analysis, that is incorporate herein.

This Electoral Board gave the Candidate considerable deference as a currently-elected Alderman in Chicago, and his Ward's Committeeman for the Democratic Party, and heard argument of well-regarded counsel on the Candidate's motion to dismiss – a rare accommodation, and affectively an “interlocutory appeal” of the hearing examiner's recommendation to deny the Candidate's motion to strike.

The Electoral Board was concerned about maintaining the integrity of the election process, and preventing fraud, even going so far as to warn the Objector's counsel that should a large number of objections be overruled, the matter would be referred to the office of Cook County State's Attorney, Anita Alvarez, for prosecution and/or perjury charges. The concerns about fraud, however, do not only apply to an objector's petition, but apply equally (or more so), to a candidate's nomination papers. Objectors respectfully request equally careful consideration and review of their objections to the Candidate's nomination papers, asserting a pattern of fraud.

That is, Objectors assert that each of the circulators that submitted petition signature sheets containing greater than 50% invalid, or bogus, lines perjured himself/herself, and the entire sheet should be stricken and not counted. Objectors assert that if more than half of the lines per page are stricken, then such fact in evidence should be deemed to be a preponderance of the evidence, a fact that occurs when there is a pattern of fraud by the circulators, and not mere inadvertence, or random errors.

Along the foregoing lines, Objectors move for summary judgment on their Objector's Petition, that each and every page containing over 50% invalid/stricken signature constitutes a pattern of fraud, and warrants striking of all signatures on such respective pages. Accordingly, Candidate would have only 750 valid signatures, from the pages that contain more than 50%

valid signatures, a quantity that is less than the 1,256 signatures required.

Finally, Objectors offer into evidence as their Sur-Response to Candidate's motion to strike the Records Examination results, and the attached Analysis (attached and incorporated herein, as Exhibit A). Clearly, there was no fraud on the part of the Objectors, and the only fraud was that of Candidate, and/or his circulators.

B. *Pattern of Fraud.*

Objectors' raised a challenge to Candidate's nomination papers arising from a "*pattern of fraud*" that was apparent when the nomination papers were reviewed (and thereafter confirmed by the Records Examination). Specifically, Objectors alleged the following in their Objectors' Petition (par. 14 and 15):

14. Objectors state that the Nomination Papers contain petition sheets purportedly circulated by individuals whose petition sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every signature on every sheet purportedly circulated by said individuals are invalid, and should be invalidated, in order to protect the integrity of the electoral process, in accordance with the principles set forth in the decisions of *Canter v. Cook County Officers Electoral*, 170 Ill.App.3d 364, 523 N.E.2d 1299 (1st Dist. 1988); *Huskey v. Municipal Officers Electoral Bd. for Village of Oak Lawn*, 156 Ill.App.3d 201, 509 N.E.2d 555 (1st Dist., 1987); *Fortas v. Dixon*, 122 Ill.App.3d 697, 462 N.E.2d 615 (1st Dist. 1984), et al.

The Objectors assert that each and every circulator that submitted petition signatures that contained more than 50% invalid signatures submitted a false circulator's affidavit, in violation of Section 7-10 of the Election Code, constituting a pattern of fraud warranting striking of all Candidate's signatures.

In 1984 the Illinois Appellate Court took a pro-active stance to protect the integrity of the electoral process, and followed up in the next few years with decisions that addressed the concerns that were raised by this Board – fraud in the electoral process.

As the Court noted in *Fortas*, " ... when in the course of hearing objections to nominating papers, evidence beyond specific objections comes to the electoral board's attention, it cannot close its eyes and ears if evidence is relevant to the protection of the electoral process." *Fortas vs. Dixon*, 122 Ill.App.3d 697, 462 N.E.2d 615 (1984).

Following on the heels of *Fortas*, the Appellate Court expanded the law relative to striking of otherwise unchallenged signatures when an invalid circulator's affidavit is proven to be the case. In *Huskey vs. Municipal Officers Electoral Board for the Village of Oak Lawn*, 156 Ill.App.3d 201, 509 N.E.2d 555 (1987), a unanimous appellate court upheld Judge Barth's decision invalidating entire sheets of petitions that had not even been challenged based upon the finding that the circulator's affidavit was falsely sworn to on many of the petition sheets.

The *Huskey* court found that the language in the circulator's affidavit to be mandatory and relied upon its decision in *Fortas*, *supra*.

"The circulator's affidavit is one of the primary safeguards against fraudulent nomination petitions. (*Fortes v. Dixon*; *Havens v. Miller*). For this reason, a circulator's false affidavit taints the entire sheet."

Huskey, 156 Ill.App.3d at 205.

The court went on to find that even though the circulator may not have had any fraudulent intent, did not affect its ruling (at 205). *Huskey* then quoted the well-known maxim of election law:

"Election laws exist to preserve the integrity of our government."
(*Glenn v. Radden*, 1984, 127 Ill.App.3d 712, 83 Ill.Dec. 9, 467, N.E.2d 616.)"

* * *

"The obvious purpose of the requirement that each person may only sign his or her name is to provide an accurate showing of the candidate's support in the community." *Huskey* at 206.

The court went on to invalidate all of the petitions, even those where no objections had been raised, in order to protect the integrity of the electoral process.

Next, the court in *Cantor vs. Cook County Officer Electoral Board*, 170 Ill.App.3d 364, 523 N.E.2d 1299 (1988), adopted the holdings of *Fortas* and *Huskey*, and struck sheets that had not been objected to, and invalidated all sheets of a particular circulator where then had been evidence of a pattern of fraud.

The court in *Cantor* reviewed the non-genuine signatures and found an incredible pattern of false swearing." *Cantor vs. Cook County Officer Electoral Board*, 170 Ill.App.3d 364, 369, 523 N.E.2d 1299 (1988).

The court in *Cantor* relied upon Section 7-10 of the Election Code, and that the provisions of the circulator's affidavit must be strictly enforced to ensure the fairness and honesty of the entire election process. *Cantor vs. Cook County Officer Electoral Board*, 170 Ill.App.3d 364, 369, 523 N.E.2d 1299 (1988).

Over two thirds of Candidate's sheet contain mostly false, fraudulent and/or invalid signatures. Overlooking this shockingly large *invalidity* rate, and allowing this Candidate's name to be printed upon the ballot would only reward, and encourage, such slipshod and questionable petition signature gathering in the future. If this Candidate stands behind his signature petitions – having over 60% bogus or invalid total signatures – this Electoral Board should consider the precedent that it will set, and how it low the bar for admission to elected office will be in the future. Certainly, the voters deserve better than a 40%-of-the-time elected

official, who takes shortcuts the other 60% of the time. Such work is hardly the performance that voters deserve, or expect, of their Representative in the US Congress (or, a sitting Alderman).

The number-of-signatures effect, on the surface, is impressive, as this Electoral Board noted. The appearance that is created is that of a sitting Chicago Alderman, who presumably has the resources, Ward committeemen, and the ability to properly gather signatures. Coupled with two prominent law firms representing this Candidates – James Nally and Burt Odelson – and lending their reputations and strident arguments, inroads were made even with this Electoral Board, that entertained and deliberated for about an hour on Candidate's Motion to Strike, and issued stern warnings to Objectors about the consequences of submitting a “shotgun” objection (e.g., referral to State's Attorney's Office for prosecution). The reality is quite a different, and directly the opposite of Candidate's assertions.

Although the Records Examination indicates that, despite submitting almost 4,000 signatures, Candidate barely exceeded the required 1,256 minimum signatures, the reason for this result is, that many signatures clips were not transferred from the Cook County Clerk's office to the State voter database, printed names that were permitted, double-signed lines that were not checked, and primarily, as the Candidate's counsel argued, that Objectors overlooked many objections that could have been asserted.

And certainly most candidates realize that objectors have limited time to review signatures – not only restricted by the one week window allowed under the election code to review nomination papers, but also allocation of time among extraordinarily large number of candidates that submitted nomination papers for this Special Primary Election. Candidates understand the process, and those who do not have a sufficient number of valid signatures try to insulate themselves from a challenge by “padding” or filling their nomination papers with hurried, or outright fraudulent, signatures. Both as a show of their power, and a deterrent to challenges.

However, as this Candidate's nomination papers confirm, and contrary to his counsel's very stern and aggressive arguments, the sheer number of signatures submitted has no real-world bearing on validity of signatures.

There have been many reported techniques used by unscrupulous candidates, and their paid circulators (or petition gatherers who do not sign as circulators), including round-tabling, passing a petition around a church service, leaving a petition at a bar, telling voters sign every other line, or outright fraudulent completion of petition sheets. This Electoral Board is well aware that these tactics have been used by a few candidates.

Accordingly, Objectors assert that the Records Examination should be taken as evidence of fraud for every petition signature sheet where over 50% of the signatures were invalidated. Such a high percentage of invalid signatures is evidence of a pattern of fraud, and not mere inadvertence or de minimis errors that this Electoral Board was expecting from this Candidate. Therefore, all signatures should be stricken, or in the alternative, all signatures removed from pages where more than 50% of the signatures were found invalid, leaving the Candidate only 750 valid signatures.

C. Equal Protection Violation.

The Election Code imposes two different standards for the number of signatures on established party candidates and independents. All candidates should be governed by the same, stricter, standard – that is, both a minimum and a maximum number of signatures, to insure that only truly genuine signatures are submitted, and petition-filling/padding be proscribed.

The failure to impose a maximum number of signatures upon established party candidates violates the equal protection provisions of the Illinois and US Constitutions, and creates a situation, such as that before this Electoral Board, that is ripe for fraud, and virtually encourages unscrupulous candidates to overwhelm objectors with the number of signatures submitted.

This double-standard prevents a meaningful review of signatures during the one week permitted for such review – particularly where, as this Candidate did, a few valid signatures are interspersed among dozens of invalid signatures³. Such an approach creates the proverbial needle in a haystack search, such that an objector would have to pick one or two candidates to

³ It is known practice of devious or unethical circulators to direct actual/real voters to sign every other or third line on a petition sheet, leaving many blank lines among the valid signatures, that are “filled in” later. Though this is impermissible and illegal, it occurs nonetheless.

review, because it would be cost prohibitive, and virtually impossible to review the signatures of a dozen or more candidates.

Independent candidates are restricted in their nomination papers to submitting signatures equal to no less than 5% of the number of votes cast in the district last election, but no more than 8% of the votes cast.

The similar ratio should be applied to established party signatures – no less than 0.05% and no more than 0.08% of voters cast in the district at the last election (25,120). That is, Candidate's nomination signatures should be reviewed up to only signature 2,010 (which is 0.08% of 25,120), or sheet 135 which would contain the 2,010th signature on line 10.

In total then, 1,183 objections were sustained of the first 2,000 signatures (sheets 1-134), and on Sheet 134, three additional signature were stricken of the first 10 lines. Of the first 2,010 signature submitted by the Candidate, only 824 are valid signatures (only 40% valid) pursuant to the Records Examination. Clearly, had the Candidate been governed equally, under the same requirements for other (independent) candidates, he would have failed to reach the minimum number of 1,256 signatures required. But for his padding and filling his signature petitions with bogus or invalid signatures, the Objectors would have been able to undertake a more thorough review of the Candidate's nomination papers, and even challenged circulators and notaries (given the egregious 60% invalidity rate, it more likely than not, that Candidate's petitions sheets would have contained "issues" with circulators and notaries, as well).

Requiring independent and new party candidates to submit more than twelve times the number of signatures for established parties, and then imposing a cap upon the maximum number of permissible signatures, violates the equal protection provisions of the Illinois and U.S. Constitutions. That is, well-funded candidates of established parties can pad or fill their nomination papers with virtually any type or quality of signatures, effectively obstructing, deterring and/or preventing a meaningful review and challenge, and rendering the objection provisions of Section 10-8 meaningless and unattainable.

WHEREFORE, Objectors respectfully request that their Objectors' Petition be granted, and the Candidate's name not printed upon the ballot for the Special Primary Election.

By: _____/s/_____
Attorney for Objectors

Andrew Finko PC
Attorney at Law
PO Box 2249
Chicago, IL 60690-2249
Tel (773) 480-0616
Fax (773) 453-3266

Certificate of Service

The undersigned, an attorney, certifies that he filed and served a copy of the foregoing Rule 9 Motion to the Hearing Examiner, Electoral Board's General Counsel, and attorneys for Candidate via email delivery on January 25, 2013, at or around 5:00 pm.

_____/s/_____
Andrew Finko

Beale Records Exam ANALYSIS

	A	B	C	D	E	F	G
1	Sheet No.	Signatures Per Page	Records Exam summary page number	Sustained Objections	Overruled Objections	Percentage valid Signatures	Valid signatures per page
2	1	15	Pg 1	9	4	40%	6
3	2	15		5	9	67%	10
4	3	15		5	9	67%	10
5	4	15		6	6	60%	9
6	5	15		7	7	53%	8
7	6	15		11	4	27%	4
8	7	14		12	2	14%	2
9	8	15		9	5	40%	6
10	9	15		7	5	53%	8
11	10	15		9	5	40%	6
12	11	15		9	6	40%	6
13	12	15		10	4	33%	5
14	13	15		1	8	93%	14
15	14	15		4	4	73%	11
16	15	15		9	5	40%	6
17	16	15		12	3	20%	3
18	17	15		9	4	40%	6
19	18	15		12	2	20%	3
20	19	15		10	6	33%	5
21	20	15		6	7	60%	9
22	21	15		7	7	53%	8
23	22	15		8	6	47%	7
24	23	15		6	8	60%	9
25	24	15		5	4	67%	10
26	25	15		9	4	40%	6
27	26	15		3	9	80%	12
28	27	15		11	2	27%	4
29	28	15		8	4	47%	7
30	29	15		10	2	33%	5
31	30	14		9	4	36%	5
32	31	15		11	3	27%	4
33	32	15		11	2	27%	4
34	33	15		9	5	40%	6
35	34	14		9	5	36%	5
36	35	15	Pg 2	11	4	27%	4
37	36	15		1	1	93%	14
38	37	15		3	9	80%	12
39	38	15		5	5	67%	10
40	39	15		11	2	27%	4
41	40	15		12	2	20%	3
42	41	15		7	5	53%	8
43	42	15		9	3	40%	6
44	43	15		3	6	80%	12
45	44	15		12	2	20%	3
46	45	14		5	6	64%	9
47	46	15		11	3	27%	4
48	47	15		12	2	20%	3
49	48	15		4	7	73%	11

Beale Records Exam ANALYSIS

	A	B	C	D	E	F	G
1	Sheet No.	Signatures Per Page	Records Exam summary page number	Sustained Objections	Overruled Objections	Percentage valid Signatures	Valid signatures per page
50	49	15		5	8	67%	10
51	50	15		5	8	67%	10
52	51	14		14	0	0%	0
53	52	15		13	1	13%	2
54	53	15		15	0	0%	0
55	54	15		12	3	20%	3
56	55	15		8	4	47%	7
57	56	15		10	1	33%	5
58	57	15		10	3	33%	5
59	58	15		13	1	13%	2
60	59	15		4	6	73%	11
61	60	15		12	2	20%	3
62	61	15		13	1	13%	2
63	62	15		12	2	20%	3
64	63	15		7	5	53%	8
65	64	15		11	2	27%	4
66	65	15		8	3	47%	7
67	66	15		10	2	33%	5
68	67	15		7	2	53%	8
69	68	15		13	2	13%	2
70	69	15		4	9	73%	11
71	70	15		10	2	33%	5
72	71	15		10	3	33%	5
73	72	15		5	4	67%	10
74	73	14		9	4	36%	5
75	74	15		3	1	80%	12
76	75	15		15	0	0%	0
77	76	15		13	2	13%	2
78	77	15		7	3	53%	8
79	78	15		11	2	27%	4
80	79	15		8	4	47%	7
81	80	15		11	4	27%	4
82	81	15		7	7	53%	8
83	82	15	Pg 3	13	2	13%	2
84	83	15		11	3	27%	4
85	84	15		11	3	27%	4
86	85	15		5	6	67%	10
87	86	15		10	4	33%	5
88	87	15		9	4	40%	6
89	88	15		10	4	33%	5
90	89	15		8	6	47%	7
91	90	15		8	4	47%	7
92	91	15		15	0	0%	0
93	92	15		9	2	40%	6
94	93	15		13	2	13%	2
95	94	15		11	4	27%	4
96	95	15		10	4	33%	5
97	96	15		13	2	13%	2

Beale Records Exam ANALYSIS

	A	B	C	D	E	F	G
1	Sheet No.	Signatures Per Page	Records Exam summary page number	Sustained Objections	Overruled Objections	Percentage valid Signatures	Valid signatures per page
98	97	15		10	2	33%	5
99	98	15		11	2	27%	4
100	99	14		14	0	0%	0
101	100	15		0	0	100%	15
102	101	15		7	5	53%	8
103	102	15		9	1	40%	6
104	103	14		8	2	43%	6
105	104	15		11	3	27%	4
106	105	15		13	1	13%	2
107	106	15		11	4	27%	4
108	107	15		11	2	27%	4
109	108	15		12	3	20%	3
110	109	15		11	4	27%	4
111	110	14		11	2	21%	3
112	111	14		11	3	21%	3
113	112	15		8	8	47%	7
114	113	15		4	10	73%	11
115	114	15		8	2	47%	7
116	115	15		8	3	47%	7
117	116	15		9	5	40%	6
118	117	15		8	4	47%	7
119	118	15		7	5	53%	8
120	119	15		8	2	47%	7
121	120	15		4	8	73%	11
122	121	15		7	5	53%	8
123	122	15		10	1	33%	5
124	123	15		10	4	33%	5
125	124	15		10	5	33%	5
126	125	15		7	7	53%	8
127	126	15		7	6	53%	8
128	127	15		10	4	33%	5
129	128	15		5	7	67%	10
130	129	15	Pg 4	13	1	13%	2
131	130	15		9	4	40%	6
132	131	15		6	6	60%	9
133	132	15		7	4	53%	8
134	133	15		8	5	47%	7
135	134	15		5	2	67%	10
136	135	15		9	1	40%	6
137	136		2015				0
138	137	15		8	7	47%	7
139	138	15		7	3	53%	8
140	139	15		3	10	80%	12
141	140	15		7	7	53%	8
142	141	15		15	0	0%	0
143	142	15		4	10	73%	11
144	143	15		12	3	20%	3
145	144	15		11	4	27%	4

Beale Records Exam ANALYSIS

	A	B	C	D	E	F	G
1	Sheet No.	Signatures Per Page	Records Exam summary page number	Sustained Objections	Overruled Objections	Percentage valid Signatures	Valid signatures per page
146	145	15		11	1	27%	4
147	146	15		9	1	40%	6
148	147	15		8	6	47%	7
149	148	15		5	8	67%	10
150	149	15		5	9	67%	10
151	150	15		2	8	87%	13
152	151	15		8	4	47%	7
153	152	15		2	7	87%	13
154	153	15		7	7	53%	8
155	154	15		10	3	33%	5
156	155	15		9	4	40%	6
157	156	15		4	5	73%	11
158	157	15		10	2	33%	5
159	158	15		7	4	53%	8
160	159	15		4	6	73%	11
161	160	15		7	6	53%	8
162	161	15		4	8	73%	11
163	162	15		12	2	20%	3
164	163	15		12	3	20%	3
165	164	15		10	5	33%	5
166	165	15		7	5	53%	8
167	166	15		12	2	20%	3
168	167	15		12	3	20%	3
169	168	15		10	4	33%	5
170	169	15		13	1	13%	2
171	170	15		9	3	40%	6
172	171	15		9	4	40%	6
173	172	15		9	5	40%	6
174	173	14		7	2	50%	7
175	174	15		11	2	27%	4
176	175	15		8	3	47%	7
177	176	15	Pg 5	7	7	53%	8
178	177	14		11	1	21%	3
179	178	15		7	6	53%	8
180	179	15		7	8	53%	8
181	180	15		7	1	53%	8
182	181	15		9	1	40%	6
183	182	15		5	7	67%	10
184	183	15		9	4	40%	6
185	184	15		13	2	13%	2
186	185	15		8	6	47%	7
187	186	15		12	2	20%	3
188	187	14		10	0	29%	4
189	188	1		1	0	0%	0
190	189	12		7	4	42%	5
191	190	15		11	1	27%	4
192	191	15		3	5	80%	12
193	192	15		10	5	33%	5

Beale Records Exam ANALYSIS

	A	B	C	D	E	F	G
1	Sheet No.	Signatures Per Page	Records Exam summary page number	Sustained Objections	Overruled Objections	Percentage valid Signatures	Valid signatures per page
194	193	15		11	3	27%	4
195	194	15		9	6	40%	6
196	195	15		10	4	33%	5
197	196	15		9	2	40%	6
198	197	15		7	8	53%	8
199	198	15		12	3	20%	3
200	199	15		8	5	47%	7
201	200	15		11	2	27%	4
202	201	15		6	6	60%	9
203	202	11		4	5	64%	7
204	203	11		3	5	73%	8
205	204	13		2	10	85%	11
206	205	12		6	4	50%	6
207	206	12		4	8	67%	8
208	207	14		12	2	14%	2
209	208	14		2	10	86%	12
210	209	12		3	4	75%	9
211	210	4		0	4	100%	4
212	211	4		1	2	75%	3
213	212	4		2	1	50%	2
214	213	6		3	3	50%	3
215	214	7		4	3	43%	3
216	215	8		8	0	0%	0
217	216	8		0	6	100%	8
218	217	8		0	2	100%	8
219	218	8		4	1	50%	4
220	219	9		3	1	67%	6
221	220	9		6	0	33%	3
222	221	9		5	4	44%	4
223	222	10		5	4	50%	5
224	223	2	Pg 6	0	2	100%	2
225	224	1		0	1	100%	1
226	225	1		1	0	0%	0
227	226	7		6	0	14%	1
228	227	9		7	2	22%	2
229	228	10		5	2	50%	5
230	229	13		5	6	62%	8
231	230	13		12	0	8%	1
232	231	13		7	5	46%	6
233	232	13		10	3	23%	3
234	233	14		13	1	7%	1
235	234	14		9	1	36%	5
236	235	14		10	2	29%	4
237	236	14		13	1	7%	1
238	237	15		14	1	7%	1
239	238	15		7	6	53%	8
240	239	15		3	7	80%	12
241	240	15		11	1	27%	4

Beale Records Exam ANALYSIS

	A	B	C	D	E	F	G
1	Sheet No.	Signatures Per Page	Records Exam summary page number	Sustained Objections	Overruled Objections	Percentage valid Signatures	Valid signatures per page
242	241	15		8	6	47%	7
243	242	15		11	4	27%	4
244	243	15		6	9	60%	9
245	244	15		6	8	60%	9
246	245	15		10	3	33%	5
247	246	15		5	7	67%	10
248	247	15		8	7	47%	7
249	248	15		13	1	13%	2
250	249	15		12	1	20%	3
251	250	15		15	0	0%	0
252	251	15		13	2	13%	2
253	252	15		15	0	0%	0
254	253	15		15	0	0%	0
255	254	15		9	5	40%	6
256	255	15		11	4	27%	4
257	256	15		11	3	27%	4
258	257	15		6	6	60%	9
259	258	15		11	3	27%	4
260	259	15		12	3	20%	3
261	260	14		13	0	7%	1
262	261	14		8	6	43%	6
263	262	15		11	2	27%	4
264	263	14		11	3	21%	3
265	264	15		13	2	13%	2
266	265	15		7	7	53%	8
267	266	15		10	3	33%	5
268	267	15		9	6	40%	6
269	268	15		15	0	0%	0
270	269	12		9	2	25%	3
271	270	15	Pg 7	9	3	40%	6
272	271	15		8	6	47%	7
273	272	15		10	3	33%	5
274	273	12		1	1	92%	11
275	274	12		3	4	75%	9
276	275	15		8	4	47%	7
277	Subtotals	3874		2284	1041		1590

Zahm v. Holt
13 SOEB CE 100

Candidate: Michael Holt

Office: Regional Board of School Trustee, Bureau/Henry/Stark Counties

Party: N/A

Objector: Jon A. Zahm

Attorney For Objector: Pro Se

Attorney For Candidate: Pro Se

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Candidate's nominating papers fail to specify whether the candidate is seeking to be elected to a full term or to fill an unexpired term resulting from a vacancy in said office. There are three terms up for election: Full term, 4 year unexpired term and 2 year unexpired term.

Dispositive Motions: Objector: Motion for Summary Judgment

Binder Check Necessary: No

Hearing Officer: David Herman

Hearing Officer Findings and Recommendation: Section 10-4 of the Election Code sets forth requirements of a nominating petition that must be fulfilled in order for a candidate's name to be placed on the ballot. Specifically, 10-4 requires petitions for nomination to include, among other things, the office the candidate seeks. It also imposes a penalty for noncompliance, such that no signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of Section 10-4 are complied with.

Here, by failing to specify whether he is seeking to be elected to a full term or to fill an unexpired term resulting from a vacancy in office, Candidate did not identify the specific office sought in any of his nominating papers. Similar to the candidate in Heabler v. Municipal Electoral Board of the Village of Lakemoor, 338 Ill. App. 3d 1059 (2d Dist. 2003), the failure to specify the term created a basis for confusion as to the office for which Candidate filed his nominating papers. Accordingly, Candidate's nominating papers are invalid.

On this basis, the Hearing Officer recommends that the Board grant the objection to the Candidate's nominating papers based on noncompliance with Section 10-4 of the Election Code and not certify the Candidate's name to the ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATE FOR THE OFFICE OF SCHOOL BOARD
TRUSTEE IN THE BUREAU, HENRY, STARK REGIONAL DISTRICT**

Jon A. Zahm,)	
)	
Petitioner-Objector,)	
)	
v.)	File No. 13 SOEB CE 100
)	
Michael Holt,)	
)	
Respondent-Candidate.)	

RECOMMENDATION OF HEARING EXAMINER

TO: Jon A. Zahm	Michael Holt
14910 Osco Road	461 E. 4 th Ave.
Osco, Illinois 61274	Woodhull, Illinois 61490
Tel: (309) 522-5008	Cell: (309) 738-5747
Cell: (630) 946-8683	Fax: (309) 483-2605
jon@thegoliathslayer.com	mikeholt40@gmail.com

I. Procedural History

On December 19, 2012, Candidate filed his Statement of Candidacy, Statement of Economic Interests, Loyalty Oath and Nomination Petitions. In his Statement of Candidacy, Candidate listed the office he was seeking as "Regional Board of School Trustees" in the Bureau-Henry-Stark Counties. On his nomination petitions, Candidate listed the office he was seeking as "Member of the Regional Board of School Trustees of Bureau Henry Stark Region."

Candidate failed to indicate on any of his nomination papers whether he was running for a full term or vacancy for the Consolidated Election to be held on April 9, 2013.

Objector filed his Verified Objector's Petition on January 3, 2013, alleging that the Candidate's nomination papers were invalid because Candidate did not specify whether he was seeking to fill a full term or one of the unexpired vacancies. Objector alleged that, on information and belief, at the April 9, 2013 election, 3 candidates were to be elected for a full term, one for an unexpired 4-year vacancy, and one for an unexpired 2-year vacancy. Objector asked that Candidate not be allowed to appear on the ballot for election to the office of School Board Trustee for the Bureau, Henry, Stark Regional District.

Objector filed a Motion for Summary Judgment on January 21, 2013, stating that Candidate's nomination petitions failed to conform to the requirements of section 10-4 of the Election Code, and that pursuant to Zaplosky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731 (1st

Dist. 1998), when a candidate fails to specify whether the candidate sought a full or partial term, the candidate's petitions are invalid.

II. Objection Based on Non-Compliance of Nominating Papers with 10 ILCS 5/10-4.

A. Objector's Argument

In his Petition, Objector asserts that the Candidate's nominating papers fail to specify whether Candidate is seeking to be elected to a full term or to fill an unexpired vacancy, and therefore fail to state the office sought by Candidate, as required by section 10-4 of the Election Code. As a result, Objector asserts that the Candidate's nominating petitions should be stricken in whole and Candidate should not be allowed to appear on the ballot for election.

B. Candidate's Argument

The Candidate makes no response to Objector's Petition or Motion for Summary Judgment.

C. Analysis

"The question of interpreting whether a candidate complied substantially with the Election Code is a question of law." Pascente v. County Officers Electoral Board of the County of Cook, 373 Ill. App. 3d 871, 873 (1st Dist. 2007) citing Salgado v. Marquez, 356 Ill. App. 3d 1072, 1075 (2d Dist. 2005).

Section 10-4 of the Election Code sets forth the requirements of a nominating petition that must be filed prior to a candidate's name being placed on the ballot. See Wollan v. Jacoby, 274 Ill. App. 3d 388, 393 (1st Dist. 1995); 10 ILCS 5/10-4. That section requires petitions for nomination to include, among other things, the office the candidate seeks. See 10 ILCS 5/10-4. It also imposes a penalty for noncompliance, such that: "no signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with." Wollan, 274 Ill. App. 3d at 393 quoting 10 ILCS 5/10-4.

Section 10-4 applies to persons seeking nomination as independent or nonpartisan candidates in a general election. Wollan, 274 Ill. App. 3d at 395. A similar provision of the Election Code, section 7-10, applies to persons seeking nomination as political party candidates in a primary election. Id. The Second District has held, in Salgado v. Marquez, 356 Ill. App. 3d 1072 (2d Dist. 2005), that the analysis and result of question of whether nomination petitions require candidates to set forth "the office" they are seeking is the same under sections 10-4 and 7-10 of the Election Code. See Salgado, 356 Ill. App. 3d at 1075-1076.

"A description of the office sought by a candidate is generally sufficient where there is 'no basis for confusion as to the office for which the nominating papers were filed.'" Heabler v. Municipal Electoral Board of the Village of Lakemoor, 338 Ill. App. 3d 1059, 1061 (2d Dist. 2003) quoting Lewis v. Dunne, 63 Ill. 2d 48, 53 (1976). "There is no basis for confusion where, looking at the nominating papers as a whole, it is clear which position the candidate seeks." Id.

In Heabler, the candidate filed nomination papers to be a candidate for "trustee" of the Village of Lakemoor. Heabler, 338 Ill. App. 3d at 1060. The candidate's nominating papers included both a statement of candidacy and petitions for nomination signed by voters. Id. Similar to the facts of this case, in Heabler, there were different types of trustee offices to be filled in the election; one type a full-term vacancy and carrying a term of four years, the other type created by a vacancy and carrying a term of 2 years. Id. In that case, none of the nominating papers filed by the candidate indicated which of the trustee offices he sought, but identified the office only as "trustee." Id. An incumbent trustee filed an objection to candidate's nomination papers on the basis that they did not identify which type of trustee position candidate sought. Heabler, 338 Ill. App. 3d at 1060.

There, the Second District found that because none of the candidate's nominating papers indicated which of the two trustee offices petitioner sought-full term or vacancy-there was a basis for confusion as to the office for which nominating papers were filed, and the nominating papers were invalid. Id. at 1062-1063. In its decision, the Second District distinguished the holding in Lewis v. Dunne, 63 Ill. 2d 48 (1976) (holding that nominating papers were valid because taken *as a whole*, the office sought was clearly identified), and questioned the conclusion reached by the First District in Zaplosky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731 (1998) (holding that the failure to specify the precise office sought on petitions for nomination *per se* renders nominating papers invalid, even where the specific office is identified on other nominating papers).

Here, like the candidate in Heabler, Candidate did not identify the specific office sought in any of his nominating papers. This created a basis for confusion as to the office for which Candidate filed his nominating papers. Accordingly, Candidate's nominating papers are invalid and Objector's Petition should be granted.


It should be noted, however, that the dissent in Heabler strongly criticized the majority's opinion, finding that while section 7-10 of the Election Code requires a candidate to state the office sought, it does not require a candidate to designate the *term* of the office he desires. Heabler, 338 Ill. App. 3d at 1064.

Conclusion

Hearing Examiner recommends that:

1. The Board grant the objection to the Candidate's nominating papers based on non-compliance with 10 ILCS 5/10-4 and remove the Candidate's name from the ballot.

DATED: 1/25/13



David A. Herman, Hearing Examiner

CERTIFICATE OF SERVICE

Service of the foregoing document was made by sending a copy via e-mail transmission to the following parties:

Jon A. Zahm
14910 Osco Road
Osco, Illinois 61274
jon@thegoliathslayer.com

Michael Holt
461 E. 4th Ave.
Woodhull, Illinois 61490
mikeholt40@gmail.com

on this 25th day of January, 2013.

A handwritten signature in black ink, appearing to read 'D. A. Herman', written over a horizontal line.

David A. Herman, Hearing Examiner



**FRANK HEABLER, JR., Petitioner-Appellant, v. MUNICIPAL OFFICERS
ELECTORAL BOARD OF THE VILLAGE OF LAKEMOOR and its Members
ROBERT KOEHL, DONALD POGGENSEE, and LENORE LUKAS-TUTIEN, in
Their Official Capacities; KATHERINE SCHULTZ, County Clerk of McHenry
County, in Her Official Capacity; LENORE LUKAS-TUTIEN, Village Clerk of
Lakemoor, in Her Official Capacity, Respondents-Appellees.**

No. 2-03-0345

APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

338 Ill. App. 3d 1059; 789 N.E.2d 854; 2003 Ill. App. LEXIS 563; 273 Ill. Dec. 680

May 5, 2003, Decided

SUBSEQUENT HISTORY: [***1] Released for Publication June 6, 2003. As Corrected June 2, 2003.

PRIOR HISTORY: Appeal from the Circuit Court of McHenry County. No. 03--MR--31. Honorable Michael J. Sullivan Judge, Presiding.

DISPOSITION: Affirmed.

COUNSEL: For Frank Heabler, Jr., Appellant: John L. Miller, Woerthwein & Miller, Chicago, IL.

For Robert Koehl, Lenore Lukas-Tutien, Donald Poggensee, Katherine Schultz and Village of Lakemoor, Appellees: Lisa M. Waggoner, The Waggoner Law Firm, P.C., Crystal Lake, IL

JUDGES: JUSTICE O'MALLEY delivered the opinion of the court. KAPALA, J., concurs. JUSTICE GILLERAN JOHNSON, dissenting.

OPINION BY: O'MALLEY

OPINION

[**855] [*1060] JUSTICE O'MALLEY delivered the opinion of the court:

Petitioner, Frank Heabler, Jr., appeals from the March 19, 2003, judgment of the circuit court of McHenry County that affirmed the decision of the Municipal Officers Electoral Board of the Village of Lake-

moor (the Electoral Board) sustaining objections to petitioner's nominating papers filed for the April 1, 2003, Village of Lakemoor (Lakemoor) trustee election. We affirm.

On January 13, 2003, petitioner filed nominating papers to be a candidate for trustee in the April 1, 2003, consolidated election in Lakemoor. The nominating papers included both a statement of candidacy and petitions for nomination that were signed by voters. There were two different types of trustee offices to be filled in the election. The first type was the full-term trustee office and carried a term of four years. The second [***2] type was created by a vacancy and carried a term of two [**856] years. A document distributed to candidates by Lakemoor stated that there were three four-year trustee offices and one two-year office to be filled in the election. The same document admonished the candidates to consult competent legal counsel in filing their petitions for nomination. Despite the two types of trustee offices available, petitioner identified the office he sought only as "trustee" on all of his nominating papers.

Ralph Brindise, an incumbent trustee who was also running in the April 1 election, objected to petitioner's nominating papers on the basis that they did not identify which type of trustee position petitioner sought. On February 3, 2003, the Electoral Board held a hearing on Brindise's objections. At the hearing, petitioner testified that the office he sought was trustee for a four-year term. On February 5, 2003, the Electoral Board sustained Brindise's objections, finding that petitioner had not identified which type of trustee office he was seeking in

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any of his nominating papers. As a result of this decision, petitioner's name was removed from the ballot. On March 19, 2003, the circuit court of McHenry [***3] County affirmed the Electoral Board's decision.

This court has granted accelerated review of this case under *Supreme Court Rule 311* (155 Ill. 2d R. 311). We review the decision of the Electoral Board *de novo* because it involves a question of law. *Brennan v. Kolman*, 335 Ill. App. 3d 716, 719, 269 Ill. Dec. 847, 781 N.E.2d 644 (2002).

On appeal, petitioner argues that his description of the office [*1061] sought as "trustee" was sufficient because a general description of an office is presumed to refer to the full-term office unless otherwise specified. We disagree.

A description of the office sought by a candidate is generally sufficient where there is "no basis for confusion as to the office for which the nominating papers were filed." *Lewis v. Dunne*, 63 Ill. 2d 48, 53, 344 N.E.2d 443 (1976). There is no basis for confusion where, looking at the nominating papers as a whole, it is clear which position the candidate seeks. *Lewis*, 63 Ill. 2d at 53.

In *Lewis*, a candidate for appellate judge described the office he sought only as "Judge of the Appellate Court of Illinois, First Judicial District" on his statement of candidacy. [***4] *Lewis*, 63 Ill. 2d at 50. The candidate properly described the office as "Judge of the Appellate Court of Illinois, First Judicial District, to fill the vacancy created by the retirement of the Honorable Robert E. English" on his petitions for nomination. *Lewis*, 63 Ill. 2d at 49-50. The candidate's nominating papers were challenged on the basis that the statement of candidacy did not describe the specific vacancy the candidate sought. *Lewis*, 63 Ill. 2d at 50. The supreme court held that the nominating papers were valid based on two factors. First, there was "no basis for confusion as to the office for which the nominating papers were filed." *Lewis*, 63 Ill. 2d at 53. Taken as a whole, the nominating papers, of which both the statement of candidacy and the petitions for nomination are part, clearly identified the office that the candidate sought because a specific description of the office was included in the petitions for nomination. *Lewis*, 63 Ill. 2d at 53. Second, there was nothing about the statement of candidacy itself that made it necessary for the specific description of the office to be included [***5] therein. The purpose of a statement of candidacy is to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election [**857] for the office he seeks. *Lewis*, 63 Ill. 2d at 53. The general description of the office is the functional equivalent of the specific description for this purpose. *Lewis*, 63 Ill. 2d at 53. Thus, there was no

reason for the statement of candidacy to contain more than a general description of the office where other nominating papers contained the specific description.

Zapolsky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731, 231 Ill. Dec. 210, 695 N.E.2d 1329 (1998), a First District case cited by respondent, held that the failure to specify the precise office sought on petitions for nomination *per se* renders nominating papers invalid even where the specific office is identified on other nominating papers. In *Zapolsky*, there were full-term offices and a vacancy to be filled in the election. *Zapolsky*, 296 Ill. App. 3d at 732. The candidate, however, described the office she sought on her petitions for nomination only as "Commissioner of [***6] the [*1062] Metropolitan Water Reclamation District of Greater Chicago." *Zapolsky*, 296 Ill. App. 3d at 732. The candidate correctly identified the office in her statement of candidacy and economic statement as "Commissioner of the Metropolitan Water Reclamation District of Greater Chicago to fill the vacancy for the unexpired two (2) year term." *Zapolsky*, 296 Ill. App. 3d at 732. As in *Lewis*, there was no basis for confusion as to the office for which the nominating papers were filed because the statement of candidacy and economic statement sufficiently delineated that information. The court, however, held that petitions for nomination always must identify the specific vacancy sought because of their distinctive purpose. *Zapolsky*, 296 Ill. App. 3d at 734. According to the court, "[t]he apparent purpose of nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election." *Zapolsky*, 296 Ill. App. 3d at 734. The court concluded that to accomplish this purpose "[a] potential signatory to a nominating petition has the right to know the specific [***7] vacancy sought by the candidate so that the signatory may make an informed decision to sign the petition or support another candidate for the same vacancy." *Zapolsky*, 296 Ill. App. 3d at 734.

The conclusion in *Zapolsky* is questionable. *Zapolsky* premised its holding on its finding that "[t]he apparent purpose of nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election." *Zapolsky*, 296 Ill. App. 3d at 734. *Zapolsky* cited no authority for this finding. Other cases have held, more logically, that the primary purpose of the signature requirement is to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters. *Lockhart v. Cook County Officers Electoral Board*, 328 Ill. App. 3d 838, 844, 262 Ill. Dec. 968, 767 N.E.2d 428 (2002); *Huskey v. Municipal Officers Electoral Board*, 156 Ill.

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*App. 3d 201, 206, 108 Ill. Dec. 859, 509 N.E.2d 555 (1987); Merz v. Volberding, 94 Ill. App. 3d 1111, 1118, 50 Ill. Dec. 520, 419 N.E.2d 628 (1981); [***8] Briscoe v. Kasper, 435 F.2d 1046, 1054 (7th Cir. 1970).*

We need not decide whether to adopt the *Zapolsky* holding in the Second District, however. Unlike *Zapolsky* and unlike *Lewis*, here petitioner did not identify which of the two offices he sought on any [***858] of his nominating papers. A candidate's description of the office he seeks may not create "basis for confusion as to the office for which the nominating papers were filed." *Lewis*, 63 Ill. 2d at 53. In *Lewis*, the supreme court held that the failure to specifically identify the office sought in a statement of candidacy was excused where other nominating papers did so. *Lewis*, 63 Ill. 2d at 53. Here none of [***1063] the nominating papers indicate which of the two trustee offices petitioner sought. As a result, it is not clear from the nominating papers which trustee office petitioner intended to run for. This constitutes a basis for confusion as to the office for which the nominating papers were filed.

Petitioner argues that his general description of the office he sought was sufficient because nominating papers are considered filed for the full-term office unless [***9] otherwise specified. According to petitioner, only a candidate seeking to fill an office created by a vacancy need give a specific description of the office he seeks because a vacancy is "an exception to the statutory scheme." Petitioner premises this assertion on the fact that the statute provides for trustees to serve a four-year term. 65 ILCS 5/3.1--25--5 (West 2000). The trouble with this argument is that the statute also provides for trustees to serve less than a four-year term where they fill a vacancy. 65 ILCS 5/3.1--10--50(b) (West 2000). Thus, an office created by a vacancy is not "an exception to the statutory scheme" but, rather, specifically provided for by statute.

Petitioner, in essence, asks us to create a default rule that a general description of an office sought is presumed to refer to the full-term office unless otherwise specified. We have found no authority that supports such a rule. Under *Lewis*, a candidate must make clear the office that he seeks somewhere in his nominating papers. We do not find this rule unduly burdensome such that we need qualify it today. Accordingly, petitioner's nominating papers [***10] are invalid because he failed to specify which of the two trustee positions he sought.

Petitioner additionally argues that the Electoral Board was estopped to remove his name from the ballot because Lakemoor published a document listing available offices that classified both the two-year and the four-year trustee offices as "trustee." Before an estoppel against a public body can be found, it must be shown that

an affirmative act occurred on the part of the governmental body that induced substantial reliance by the litigant. *Schumann v. Kumarich*, 102 Ill. App. 3d 454, 460, 58 Ill. Dec. 157, 430 N.E.2d 99 (1981). Petitioner does not even argue that he relied on the document in failing to specify which of the two trustee positions he sought. Nor can he. The same document made clear that there were two types of trustee offices available and even admonished petitioner to consult competent legal counsel in filing his petitions for nomination. The Electoral Board was not estopped to remove petitioner's name from the ballot.

[***1064] The judgment of the circuit court of McHenry County is affirmed.

Affirmed.

KAPALA, J., concurs.

DISSENT BY: GILLERAN JOHNSON

DISSENT

JUSTICE GILLERAN JOHNSON, [***11] dissenting:

I respectfully dissent. I believe that the petitioner complied with section 7--10 of the Election Code (10 ILCS 5/7--10 (West 2000)), which requires that a candidate's nominating papers state the office that the candidate seeks.

[***859] Specifically, section 7--10 of the Election Code provides that the statement of candidacy must state the candidate's name, his political party, his place of residency, and the office he seeks. 10 ILCS 5/7--10 (West 2000). The statement of candidacy must also be notarized. 10 ILCS 5/7--10 (West 2000). Additionally, section 7--10 of the Election Code provides that a candidate's petitions for nomination be uniform in size, contain a certain number of signatures, and be fastened together in book form. 10 ILCS 5/7--10 (West 2000). Each nominating petition must state the candidate's name, his address, and the office he seeks. 10 ILCS 5/7--10 (West 2000).

In accordance with section 7--10 of the Election Code, the petitioner stated, in both his nominating petition and statement of candidacy, that he sought the office of "trustee." [***12] " That the petitioner did not designate whether he desired a four-year or two-year term did not render his description of the office insufficient. As noted above, section 7--10 of the Election Code sets out the precise form of a candidate's nominating papers. However, nowhere in section 7--10 of the Election Code does it require a candidate to designate the term of the office he desires. See 10 ILCS 5/7--10 (West 2000).

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The majority's imposition of such a requirement on a candidate that he state the length of term he desires is, in the present case, superfluous, as the term of office of a trustee is defined by statute. Particularly, the Illinois Municipal Code (65 ILCS 5/3.1--25--5 (West 2000)) (the Municipal Code) provides: "In each village incorporated under this Code, the electors of the village shall elect 6 trustees. The term of office of the trustees shall be 4 years ***."

Although the Municipal Code also provides for trustees to serve less than four years in instances where they fill a vacancy (65 ILCS 5/3.1--10--50 (West 2000)), this does not contravene the general rule that a trustee is an elected [***13] four-year position. The majority's position that there was a basis for confusion herein is therefore flawed. It was obvious that the petitioner was not seeking to fill a vacancy. The [*1065] petitioner's nominating petition and statement of candidacy clearly indicated that the petitioner was seeking the position of trustee, which by statute is defined with a four-year term. Accordingly, the majority's suggestion that there was confusion over how long a term of office the petitioner was seeking is unfounded.

Even if section 7--10 of the Election Code did require the petitioner to state the length of the term he sought, such an omission was inconsequential, and the Electoral Board should have found that the petitioner substantially complied. It is a fundamental principle that access to a place on the ballot is a substantial right and not lightly to be denied. *Nolan v. Cook County Officers Electoral Board*, 329 Ill. App. 3d 52, 55, 263 Ill. Dec. 456, 768 N.E.2d 216 (2002). The petitioner's failure to describe the position he sought more precisely was, at maximum, a minor error. A minor error in a candidate's nominating papers should not result in a candidate's removal from the [***14] ballot. *Sullivan v. County Officers Electoral Board*, 225 Ill. App. 3d 691, 693, 167 Ill. Dec. 834, 588 N.E.2d 475 (1992).

I am mindful that compliance with section 7--10 of the Election Code has been held to be mandatory and not directory. See *Bowe v. Chicago Electoral Board*, 79 Ill. 2d 469, 470, 38 Ill. Dec. 756, 404 N.E.2d 180 (1980). However, substantial compliance has been held, in some circumstances, to satisfy even certain mandatory requirements of the Election Code, including section 7--10. See *Courtney v. County Officers Electoral Board*, 314 Ill. App. 3d 870, 876, [***860] 247 Ill. Dec. 861, 732 N.E.2d 1193 (2000) (finding that the candidate had substantially complied with section 7--10 of the Election Code even though he failed to simultaneously file his nominating petitions with his statement of candidacy); *Panarese v. Hosty*, 104 Ill. App. 3d 627, 628-29, 60 Ill.

Dec. 434, 432 N.E.2d 1333 (1982) (finding that the candidate substantially complied with section 7--10 of the Election Code even though he omitted his street and number from his nominating petition); *Madden v. Schumann*, 105 Ill. App. 3d 900, 903, 61 Ill. Dec. 684, 435 N.E.2d 173 (1982) [***15] (holding that the candidate's omission of the phrase "is a registered voter" from the circulator's oath, as required by section 7--10 of the Election Code, was a technical deviation that did not warrant removal from the ballot); *Stevenson v. County Officers Electoral Board*, 58 Ill. App. 3d 24, 26, 15 Ill. Dec. 571, 373 N.E.2d 1043 (1978) (finding that the candidate's failure to number his nominating petitions consecutively, as required by section 7--10 of the Election Code, was a mere technical deficiency that did not render his nominating papers invalid).

Even *Lewis*, upon which the majority hangs its hat, establishes that a candidate can satisfy section 7--10 of the Election Code with substantial compliance. The *Lewis* court specifically held that the candidate "substantially complied" with section 7--10 of the Election Code even though he failed to describe the particular vacancy that he was seeking in his statement of candidacy. *Lewis*, 63 Ill. 2d at 53. [*1066] Although the *Lewis* court predicated its finding of substantial compliance on the fact that the candidate's nominating papers as a whole did describe the particular vacancy that the candidate [***16] was seeking, describing a particular vacancy in this case was not necessary because, as noted above, the petitioner was not seeking a vacancy. What was required, rather, was that the petitioner state the office he was seeking. This, I believe, the petitioner did.

On a final note, the provisions of the Electoral Code are designed to protect the integrity of the electoral process. *Welch v. Johnson*, 147 Ill. 2d 40, 56, 167 Ill. Dec. 989, 588 N.E.2d 1119 (1992). Furthermore, villages such as Lakemoor have a legitimate interest in regulating the number of candidates on the ballot. Yet, when access to the ballot is involved, the restriction on that access should require the least drastic measure to achieve these ends. In this case, removing the petitioner from the ballot was a drastic measure that did little to protect the integrity of the electoral process. Moreover, the Village of Lakemoor's interests in this case were far outweighed by the petitioner's right to access on the ballot and the voters' right to elect a candidate of their choice. Frank Heabler should have been listed on the ballot for the April 1, 2003, election as a candidate for trustee.

For the above [***17] reasons, I believe the Electoral Board's removal of the petitioner from the ballot was erroneous.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR THE OFFICE OF
SCHOOL BOARD TRUSTEE IN THE BUREAU, HENRY, STARK REGIONAL DISTRICT**

JON A. ZAHM,

Petitioner-Objector,

v.

MICHAEL HOLT,

Respondent-Candidate.

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS
13 JAN -3 PM 4: 14

VERIFIED OBJECTOR'S PETITION

INTRODUCTION

Now comes Jon A. Zahm (the "Objector"), and he states as follows:

1. The Objector resides at 14910 Osco Road, Osco, in Henry County, Osco Township Illinois, 61274, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this petition ("Petition") is that of a voter who desires that the laws governing the filing of nomination papers for the Office of School Board Trustee in the Bureau, Henry, Stark Regional District are properly complied with and that only qualified candidates, appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers (the "Nomination Papers") of Michael Holt (the "Candidate") as a candidate for nomination to the office of School Board Trustee in the Bureau, Henry, Stark Regional District (the "Office")

to be voted on at the 9th of April, 2013 (the "Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:

4. The Candidate's nomination papers, petition sheets and statement of candidacy do not specify whether the Candidate is seeking to be elected to a full term or to fill an unexpired vacancy in the office of School Board Trustee for the Bureau, Henry, Stark Regional District. By information and belief, at the April 9, 2013 elections, 3 candidates for the office of School Board Trustee of the Bureau, Henry, Stark Regional District will be elected for a full term, and one for an unexpired 4-year vacancy, and one for an unexpired 2-year vacancy.

5. Because the Candidate does not specify whether he is seeking to fill a full term or one of the unexpired vacancies, the Candidate has not properly specified which of the offices he is seeking. Leaving the petitions blank in this regard potentially gives the candidate great advantage as to which term they circle on the form, after signatures are gathered, depending on the gender and geography of others who file for specific seats available.

6. For the reasons specified above the Candidate's nomination papers do not substantially comply with the requirements of the Illinois Election Code and therefore the Candidate's Nomination Papers are invalid.

WHEREFORE, the Objector requests a hearing on the objections stated herein, an examination by the Electoral Board of the official records relating to the matters alleged herein, a ruling that the Nomination Papers are invalid as not lawful and a ruling that the name of the Candidate Michael Holt shall not appear on the ballot for election to the office of School Board Trustee for the Bureau, Henry, Stark Regional District.

Jon A. Zahm

The Objector Jon A. Zahm

Subscribed and sworn to before me this 3rd day of January, 2013.

Julie Hager _____
Notary Public



STATE OF ILLINOIS)
) SS.
COUNTY OF HENRY)

The undersigned, Jon A. Zahm., under oath deposes and says that he is the Objector identified in the attached Verified Objector's Petition, and that he has reviewed the allegations contained in said Petition and is familiar with the matters alleged therein and that such allegations are true to the best information available and belief.

Jon A. Zahm
Objector

Subscribed and Sworn to before me
this 3rd. day of January, 2013

Julie N. Hager
NOTARY PUBLIC



STATEMENT OF CANDIDACY

NONPARTISAN

NAME	ADDRESS-ZIP CODE	OFFICE	CITY, VILLAGE OR SPECIAL DISTRICT
Michael Holt	461 E 4th Ave Woodhull IL 61490	Regional Board of School Trustees	Bureau Henry Stark

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

STATE OF ILLINOIS

County of Henry

SS.

I, Michael Holt being first duly sworn (or affirmed), say that I reside at
461 E 4th Ave in the City, Village Unincorporated Area (circle one) of
Woodhull (if unincorporated, list municipality that provides postal service) Zip Code 61490, in the

County of Henry, State of Illinois; that I am a qualified voter therein, that I am a candidate for Nomination/

Election to the office of Regional Board of School Trustees the Bureau Henry Stark
Name of City, Village or Special District

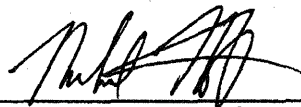
to be voted upon at the election to be held on April 9 2013 (date of election) and that I am legally qualified to

hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests

as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official ballot for

Nomination/Election to such office

**RECEIVED BY
MAIL**

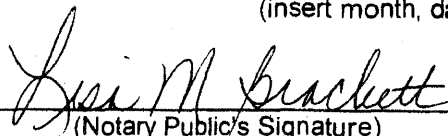


(Signature of Candidate)

Signed and sworn to (or affirmed) by Michael Holt before me, on 12-5-12
(Name of Candidate) (insert month, day, year)

(SEAL)





(Notary Public's Signature)

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS

This section will be returned to
you when the Statement is filed
with the County Clerk.

(COMPLETE BUT DO NOT DETACH)

Regional Board of School Trustees

Office or Position of Employment for which this statement is filed

(TYPE OR HAND PRINT)

Michael Holt

Name

461 E 4th Ave

Address

Woodhull

City

IL

State

61490

ZIP Code

Receipt is hereby acknowledged
of your Statement of Economic
Interests, filed pursuant to the
Illinois Governmental Ethics Act. The
Statement was filed on this date:

FILED

DEC 14 2012

BARBARA M. LINK
HENRY COUNTY CLERK

BY

**PETITION FOR NOMINATION FOR
MULTI-COUNTY REGIONAL SCHOOL TRUSTEES
TO BE FILED WITH THE STATE BOARD OF ELECTIONS**

We, the undersigned, being 50 or more of the voters qualified to vote, hereby petition that Michael Holt
who resides at 461 E. 4th Avenue in Township (or Road District) Woodhull, in
Henry County, shall be a candidate for the office of **MEMBER OF THE REGIONAL BOARD OF SCHOOL**
TRUSTEES of Bureau Henry Stark Region (Counties within region) full term or vacancy (circle
one) to be voted for at the Consolidated Election to be held April 9, 2013 (date of election).

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

	NAME (VOTER'S SIGNATURE)	STREET ADDRESS OR RR NUMBER	CITY, TOWN OR VILLAGE	IL	COUNTY
1	<i>[Signature]</i>	461 E 4th Ave	Woodhull	IL	Henry
2	<i>[Signature]</i>	116 WEST B STR	ALPHA	IL	HENRY
3	<i>[Signature]</i>	461 E. 4th Ave	Woodhull	IL	Henry
4	<i>[Signature]</i>	202 N. SCANDIA	ALPHA	IL	HENRY
5	<i>[Signature]</i>	202 N Scandia	Alpha	IL	Henry
6	<i>[Signature]</i>	390 E Highway	Woodhull	IL	Henry
7	<i>[Signature]</i>	574 E 2nd Ave	Woodhull	IL	Henry
8	<i>[Signature]</i>	211 S Scandia St	Alpha	IL	Henry
9	Harry Carlson	584 Lake Dr	Woodhull	IL	Henry
10	Diana Carlson	584 Lake Dr	Woodhull	IL	Henry
11	<i>[Signature]</i>	560 Colleen St	Woodhull	IL	Henry
12	<i>[Signature]</i>	560 Colleen St	Woodhull	IL	Henry

State of IL)
County of Henry) SS.

I, Michael Holt (Circulator's Name) do hereby certify that I reside at 461 E 4th Ave
in the City/Village/Unincorporated Area (circle one) of Woodhull (if unincorporated, list municipality that provides
postal service) (Zip Code) 61490 County of Henry State of IL that I am 18 years of age
or older, that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence, not more than 90
days preceding the last day for filing of the petitions and are genuine and that to the best of my knowledge and belief the persons so
signing were at the time of signing the petition registered voters of the political division in which the candidate is seeking elective
office and that all residence information is correctly stated, as above set forth.

**RECEIVED BY
MAIL**

Signed and sworn (Name of Circulator) by Michael Holt (Circulator's Signature) before me, on 12-5-12
(insert month, day, year)

(SEAL)

SHEET NO. 1



48:8 AM 61 DEC 12
STATE BOARD OF ELECTIONS
PRINCIPAL OFFICE

Harrington, Bernadette

From: Jon Zahm [goliathslayers@gmail.com]
Sent: Monday, January 21, 2013 2:47 PM
To: Herman, David
Cc: jon@thegoliathslayer.com; Mikeholt40@gmail.com; Harrington, Bernadette; Sandvoss, Steve
Subject: Re: Zahm v. Holt, SOEB CE 100

I move for summary judgment on this case to not place the candidate objected to from the ballot as the law and precedent is very clear.

Article 10 of the Election Code governs the making of nominations in non-partisan and independent races. Section 10-4 governs the form of the petitions and Section 10-5 governs the form of the statement of candidacy and the filing of the statement of economic interest. Section 10-4 requires that the nominating petitions heading give "the information as to the name of the candidate or candidates in whose behalf such petition is signed; the office; the party; place of residence; and such other information or wording as required to make same valid..." Section 10-5 requires that the statement of candidacy shall contain "the address of such candidate, shall state that the candidate is qualified for the office specified..."

The question that needs to be addressed is whether the failure of the candidates to state sufficiently the office invalidates their nominating papers. The First District Appellate Court addressed the issue of voter confusion because of the improper designation of the office by the candidate in *Zapolsky v. Cook County Officers Electoral Bd.*, 296 Ill.App.3d 731 (1st Dist. 1998). In that case, the appellate court held that the failure to specify on a nominating petition sheet whether the candidate was seeking a full or partial term invalidates the petitions when there are both full and partial terms of the same office on the ballot in the same election. When both full and partial terms for the same office are on the ballot in the same election, the failure to specify on petitions which term the candidate is seeking fails to strictly or substantially comply with Election Code provisions, and causes a basis for confusion to the voters as to which of the possible offices this candidate is seeking. The court went on to say that where there are numerous vacancies in a district that are up for election, failing to specify the office sought is fatal. The court determined that:

The apparent purpose of the nominating petitions signed by the voters is to expand the informed participation of members of the respective parties in their primary election. Nominating petitions should be free from a "basis for confusion" as to the office for which they are filed. A potential signatory to a nominating petition has the right to know the specific vacancy sought by a candidate so that the signatory may make an informed decision to sign the petition of support another candidate for the same vacancy. *Zapolsky*, at 735.

**Respectfully,
Jon A. Zahm**

On Fri, Jan 18, 2013 at 5:33 PM, Herman, David <dherman@giffinwinning.com> wrote:

Pursuant to the case management conference held today relating to the pending objection to your nomination papers filed by Mr. Zahm, I order the following:

1. This matter involves a legal dispute as to the legal sufficiency of the nominations filed by the Candidate and there is no need to hold an evidentiary hearing in this matter as acknowledged by the parties present during today's pre-hearing conference (in person and by phone message to Mr. Holt). Accordingly, no evidentiary hearing will be held in this matter and the objection will be ruled upon based on the filings of the parties.
2. The deadlines set forth in the Rules of Procedure adopted by the State Board of Elections Sitting as the Duly Constituted State Officers Electoral Board and published on the State Board of Elections website must be strictly adhered to by the parties.
 - a. Candidate's Motion to Strike and/or Dismiss or other similar motion (and memorandum of law) and Objector's Motion for Summary Judgment or similar motion (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal

counsel (all email addresses are in the to and from line of this email) on or before 5:00 p.m. central time on Monday, January 21, 2013.

b. Objector's Response to Candidate's filing (and memorandum of law) and Candidate's Response to Objector's filing (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 5:00 p.m. central time on Tuesday, January 22, 2013.

c. Objector's Reply to Candidate's Response (and memorandum of law) and Candidate's Reply to Objector's Response (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 5:00 p.m. central time on Wednesday, January 22, 2013.

3. The next hearing before the State Officers Electoral Board is set for Wednesday, January 30, 2013 at 3:00 p.m. central time at the State Board of Elections Offices (in Chicago and Springfield). At that time the State Officers Electoral Board will consider the Hearing Officer's Report and Recommendation on the pending objection to your candidacy.

4. The parties Exceptions to the Report of the Hearing Officer, if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 3:00 p.m. central time on Tuesday, January 29, 2013.

5. Attached are the entries of appearances filed by each party at the conference held today.

6. Acknowledge receipt of this email order.

Dated: 1/18/2013

David Herman

David A. Herman

Attorney

Giffin, Winning, Cohen & Bodewes, P.C.

One West Old State Capitol Plaza, Suite 600

Springfield, IL 62701

Phone (217) 525-1571

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Zahm v. Wilcoxen
13 SOEB CE 101

Candidate: Larry E. Wilcoxen

Office: Regional Board of School Trustee, Bureau/Henry/Stark Counties

Party: N/A

Objector: Jon A. Zahm

Attorney For Objector: Pro Se

Attorney For Candidate: Pro Se

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Candidate's nominating papers fail to specify whether the candidate is seeking to be elected to a full term or to fill an unexpired term resulting from a vacancy in said office. There are three terms up for election: Full term, 4 year unexpired term and 2 year unexpired term.

Dispositive Motions: Objector: Motion for Summary Judgment

Binder Check Necessary: No

Hearing Officer: David Herman

Hearing Officer Findings and Recommendation: Section 10-4 of the Election Code sets forth requirements of a nominating petition that must be fulfilled in order for a candidate's name to be placed on the ballot. Specifically, 10-4 requires petitions for nomination to include, among other things, the office the candidate seeks. It also imposes a penalty for noncompliance, such that no signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of Section 10-4 are complied with.

Here, by failing to specify whether he is seeking to be elected to a full term or to fill an unexpired term resulting from a vacancy in office, Candidate did not identify the specific office sought in any of his nominating papers. Similar to the candidate in Heabler v. Municipal Electoral Board of the Village of Lakemoor, 338 Ill. App. 3d 1059 (2d Dist. 2003), the failure to specify the term created a basis for confusion as to the office for which Candidate filed his nominating papers. Accordingly, Candidate's nominating papers are invalid.

On this basis, the Hearing Officer recommends that the Board grant the objection to the Candidate's nominating papers based on noncompliance with Section 10-4 of the Election Code and not certify the Candidate's name to the ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATE FOR THE OFFICE OF SCHOOL BOARD
TRUSTEE IN THE BUREAU, HENRY, STARK REGIONAL DISTRICT**

Jon A. Zahm,)	
)	
Petitioner-Objector,)	
)	
v.)	File No. 13 SOEB CE 101
)	
Larry E. Wilcoxon,)	
)	
Respondent-Candidate.)	

RECOMMENDATION OF HEARING EXAMINER

TO: Jon A. Zahm	Larry E. Wilcoxon
14910 Osco Road	P.O. Box 65
Osco, Illinois 61274	Walnut, Illinois 61376
Tel: (309) 522-5008	Tel: (815) 379-2836
Cell: (630) 946-8683	Cell: (815) 866-2836
jon@thegoliathslayer.com	lwilcxn@mchsi.com

I. Procedural History

On December 19, 2012, Candidate filed his Statement of Candidacy, Statement of Economic Interests, Loyalty Oath and Nomination Petitions. In his Statement of Candidacy, Candidate listed the office he was seeking as "Commissioner Regional School Trustee" in the Bureau-Henry-Stark Counties. On his nomination petitions, Candidate listed the office he was seeking as "Member of the Regional Board of School Trustees of Bureau Henry Stark Region."

Candidate failed to indicate on any of his nomination papers whether he was running for a full term or vacancy for the Consolidated Election to be held on April 9, 2013.

Objector filed his Verified Objector's Petition on January 3, 2013, alleging that the Candidate's nomination papers were invalid because Candidate did not specify whether he was seeking to fill a full term or one of the unexpired vacancies. Objector alleged that, on information and belief, at the April 9, 2013 election, 3 candidates were to be elected for a full term, one for an unexpired 4-year vacancy, and one for an unexpired 2-year vacancy. Objector asked that Candidate not be allowed to appear on the ballot for election to the office of School Board Trustee for the Bureau, Henry, Stark Regional District.

Objector further filed a Motion for Summary Judgment on January 21, 2013, stating that Candidate's nomination petitions failed to conform to the requirements of section 10-4 of the Election Code, and that pursuant to Zaplosky v. Cook County Officers Electoral Board, 296 Ill.

App. 3d 731 (1st Dist. 1998), when a candidate fails to specify whether the candidate sought a full or partial term, the candidate's petitions are invalid.

II. Objection Based on Non-Compliance of Nominating Papers with 10 ILCS 5/10-4.

A. Objector's Argument

In his Petition, Objector asserts that the Candidate's nominating papers fail to specify whether Candidate is seeking to be elected to a full term or to fill an unexpired vacancy, and therefore fail to state the office sought by Candidate, as required by section 10-4 of the Election Code. As a result, Objector asserts that the Candidate's nominating petitions should be stricken in whole and Candidate should not be allowed to appear on the ballot for election.

B. Candidate's Argument

The Candidate makes no response to Objector's Petition or Motion for Summary Judgment.

C. Analysis

"The question of interpreting whether a candidate complied substantially with the Election Code is a question of law." Pascente v. County Officers Electoral Board of the County of Cook, 373 Ill. App. 3d 871, 873 (1st Dist. 2007) citing Salgado v. Marquez, 356 Ill. App. 3d 1072, 1075 (2d Dist. 2005).

Section 10-4 of the Election Code sets forth the requirements of a nominating petition that must be filed prior to a candidate's name being placed on the ballot. See Wollan v. Jacoby, 274 Ill. App. 3d 388, 393 (1st Dist. 1995); 10 ILCS 5/10-4. That section requires petitions for nomination to include, among other things, the office the candidate seeks. See 10 ILCS 5/10-4. It also imposes a penalty for noncompliance, such that: "no signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with." Wollan, 274 Ill. App. 3d at 393 quoting 10 ILCS 5/10-4.

Section 10-4 applies to persons seeking nomination as independent or nonpartisan candidates in a general election. Wollan, 274 Ill. App. 3d at 395. A similar provision of the Election Code, section 7-10, applies to persons seeking nomination as political party candidates in a primary election. Id. The Second District has held, in Salgado v. Marquez, 356 Ill. App. 3d 1072 (2d Dist. 2005), that the analysis and result of question of whether nomination petitions require candidates to set forth "the office" they are seeking is the same under sections 10-4 and 7-10 of the Election Code. See Salgado, 356 Ill. App. 3d at 1075-1076.

"A description of the office sought by a candidate is generally sufficient where there is 'no basis for confusion as to the office for which the nominating papers were filed.'" Heabler v. Municipal Electoral Board of the Village of Lakemoor, 338 Ill. App. 3d 1059, 1061 (2d Dist. 2003) quoting Lewis v. Dunne, 63 Ill. 2d 48, 53 (1976). "There is no basis for confusion where, looking at the nominating papers as a whole, it is clear which position the candidate seeks." Id.

In Heabler, the candidate filed nomination papers to be a candidate for “trustee” of the Village of Lakemoor. Heabler, 338 Ill. App. 3d at 1060. The candidate’s nominating papers included both a statement of candidacy and petitions for nomination signed by voters. Id. Similar to the facts of this case, in Heabler, there were different types of trustee offices to be filled in the election; one type a full-term vacancy and carrying a term of four years, the other type created by a vacancy and carrying a term of 2 years. Id. In that case, none of the nominating papers filed by the candidate indicated which of the trustee offices he sought, but identified the office only as “trustee.” Id. An incumbent trustee filed an objection to candidate’s nomination papers on the basis that they did not identify which type of trustee position candidate sought. Heabler, 338 Ill. App. 3d at 1060.

There, the Second District found that because none of the candidate’s nominating papers indicated which of the two trustee offices petitioner sought—full term or vacancy—there was a basis for confusion as to the office for which nominating papers were filed, and the nominating papers were invalid. Id. at 1062-1063. In its decision, the Second District distinguished the holding in Lewis v. Dunne, 63 Ill. 2d 48 (1976) (holding that nominating papers were valid because taken *as a whole*, the office sought was clearly identified), and questioned the conclusion reached by the First District in Zaplosky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731 (1998) (holding that the failure to specify the precise office sought on petitions for nomination *per se* renders nominating papers invalid, even where the specific office is identified on other nominating papers).

Here, like the candidate in Heabler, Candidate did not identify the specific office sought in any of his nominating papers. This created a basis for confusion as to the office for which Candidate filed his nominating papers. Accordingly, Candidate’s nominating papers are invalid and Objector’s Petition should be granted.

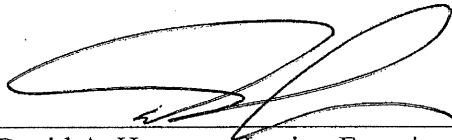
It should be noted, however, that the dissent in Heabler strongly criticized the majority’s opinion, finding that while section 7-10 of the Election Code requires a candidate to state the office sought, it does not require a candidate to designate the *term* of the office he desires. Heabler, 338 Ill. App. 3d at 1064.

Conclusion

Hearing Examiner recommends that:

1. The Board grant the objection to the Candidate’s nominating papers based on non-compliance with 10 ILCS 5/10-4 and remove the Candidate’s name from the ballot.

DATED: 1/25/13



David A. Herman, Hearing Examiner

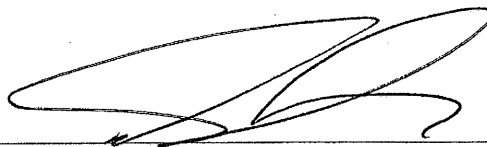
CERTIFICATE OF SERVICE

Service of the foregoing document was made by sending a copy via e-mail transmission to the following parties:

Jon A. Zahm
14910 Osco Road
Osco, Illinois 61274
jon@thegoliathslayer.com

Larry E. Wilcoxon
P.O. Box 65
Walnut, Illinois 61376
lwilcxn@mchsi.com

on this 25th day of January, 2013.

A handwritten signature in black ink, appearing to read 'D. Herman', written over a horizontal line.

David A. Herman, Hearing Examiner



**FRANK HEABLER, JR., Petitioner-Appellant, v. MUNICIPAL OFFICERS
ELECTORAL BOARD OF THE VILLAGE OF LAKEMOOR and its Members
ROBERT KOEHL, DONALD POGGENSEE, and LENORE LUKAS-TUTIEN, in
Their Official Capacities; KATHERINE SCHULTZ, County Clerk of McHenry
County, in Her Official Capacity; LENORE LUKAS-TUTIEN, Village Clerk of
Lakemoor, in Her Official Capacity, Respondents-Appellees.**

No. 2-03-0345

APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

338 Ill. App. 3d 1059; 789 N.E.2d 854; 2003 Ill. App. LEXIS 563; 273 Ill. Dec. 680

May 5, 2003, Decided

SUBSEQUENT HISTORY: [***1] Released for Publication June 6, 2003. As Corrected June 2, 2003.

PRIOR HISTORY: Appeal from the Circuit Court of McHenry County. No. 03--MR--31. Honorable Michael J. Sullivan Judge, Presiding.

DISPOSITION: Affirmed.

COUNSEL: For Frank Heabler, Jr., Appellant: John L. Miller, Woerthwein & Miller, Chicago, IL.

For Robert Koehl, Lenore Lukas-Tutien, Donald Poggensee, Katherine Schultz and Village of Lakemoor, Appellees: Lisa M. Waggoner, The Waggoner Law Firm, P.C., Crystal Lake, IL

JUDGES: JUSTICE O'MALLEY delivered the opinion of the court. KAPALA, J., concurs. JUSTICE GILLERAN JOHNSON, dissenting.

OPINION BY: O'MALLEY

OPINION

[**855] [*1060] JUSTICE O'MALLEY delivered the opinion of the court:

Petitioner, Frank Heabler, Jr., appeals from the March 19, 2003, judgment of the circuit court of McHenry County that affirmed the decision of the Municipal Officers Electoral Board of the Village of Lake-

moor (the Electoral Board) sustaining objections to petitioner's nominating papers filed for the April 1, 2003, Village of Lakemoor (Lakemoor) trustee election. We affirm.

On January 13, 2003, petitioner filed nominating papers to be a candidate for trustee in the April 1, 2003, consolidated election in Lakemoor. The nominating papers included both a statement of candidacy and petitions for nomination that were signed by voters. There were two different types of trustee offices to be filled in the election. The first type was the full-term trustee office and carried a term of four years. The second [***2] type was created by a vacancy and carried a term of two [**856] years. A document distributed to candidates by Lakemoor stated that there were three four-year trustee offices and one two-year office to be filled in the election. The same document admonished the candidates to consult competent legal counsel in filing their petitions for nomination. Despite the two types of trustee offices available, petitioner identified the office he sought only as "trustee" on all of his nominating papers.

Ralph Brindise, an incumbent trustee who was also running in the April 1 election, objected to petitioner's nominating papers on the basis that they did not identify which type of trustee position petitioner sought. On February 3, 2003, the Electoral Board held a hearing on Brindise's objections. At the hearing, petitioner testified that the office he sought was trustee for a four-year term. On February 5, 2003, the Electoral Board sustained Brindise's objections, finding that petitioner had not identified which type of trustee office he was seeking in

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any of his nominating papers. As a result of this decision, petitioner's name was removed from the ballot. On March 19, 2003, the circuit court of McHenry [***3] County affirmed the Electoral Board's decision.

This court has granted accelerated review of this case under *Supreme Court Rule 311* (155 Ill. 2d R. 311). We review the decision of the Electoral Board *de novo* because it involves a question of law. *Brennan v. Kolman*, 335 Ill. App. 3d 716, 719, 269 Ill. Dec. 847, 781 N.E.2d 644 (2002).

On appeal, petitioner argues that his description of the office [*1061] sought as "trustee" was sufficient because a general description of an office is presumed to refer to the full-term office unless otherwise specified. We disagree.

A description of the office sought by a candidate is generally sufficient where there is "no basis for confusion as to the office for which the nominating papers were filed." *Lewis v. Dunne*, 63 Ill. 2d 48, 53, 344 N.E.2d 443 (1976). There is no basis for confusion where, looking at the nominating papers as a whole, it is clear which position the candidate seeks. *Lewis*, 63 Ill. 2d at 53.

In *Lewis*, a candidate for appellate judge described the office he sought only as "Judge of the Appellate Court of Illinois, First Judicial District" on his statement of candidacy. [***4] *Lewis*, 63 Ill. 2d at 50. The candidate properly described the office as "Judge of the Appellate Court of Illinois, First Judicial District, to fill the vacancy created by the retirement of the Honorable Robert E. English" on his petitions for nomination. *Lewis*, 63 Ill. 2d at 49-50. The candidate's nominating papers were challenged on the basis that the statement of candidacy did not describe the specific vacancy the candidate sought. *Lewis*, 63 Ill. 2d at 50. The supreme court held that the nominating papers were valid based on two factors. First, there was "no basis for confusion as to the office for which the nominating papers were filed." *Lewis*, 63 Ill. 2d at 53. Taken as a whole, the nominating papers, of which both the statement of candidacy and the petitions for nomination are part, clearly identified the office that the candidate sought because a specific description of the office was included in the petitions for nomination. *Lewis*, 63 Ill. 2d at 53. Second, there was nothing about the statement of candidacy itself that made it necessary for the specific description of the office to be included [***5] therein. The purpose of a statement of candidacy is to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election [**857] for the office he seeks. *Lewis*, 63 Ill. 2d at 53. The general description of the office is the functional equivalent of the specific description for this purpose. *Lewis*, 63 Ill. 2d at 53. Thus, there was no

reason for the statement of candidacy to contain more than a general description of the office where other nominating papers contained the specific description.

Zapolsky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731, 231 Ill. Dec. 210, 695 N.E.2d 1329 (1998), a First District case cited by respondent, held that the failure to specify the precise office sought on petitions for nomination *per se* renders nominating papers invalid even where the specific office is identified on other nominating papers. In *Zapolsky*, there were full-term offices and a vacancy to be filled in the election. *Zapolsky*, 296 Ill. App. 3d at 732. The candidate, however, described the office she sought on her petitions for nomination only as " 'Commissioner of [***6] the [*1062] Metropolitan Water Reclamation District of Greater Chicago.' " *Zapolsky*, 296 Ill. App. 3d at 732. The candidate correctly identified the office in her statement of candidacy and economic statement as " 'Commissioner of the Metropolitan Water Reclamation District of Greater Chicago to fill the vacancy for the unexpired two (2) year term.' " *Zapolsky*, 296 Ill. App. 3d at 732. As in *Lewis*, there was no basis for confusion as to the office for which the nominating papers were filed because the statement of candidacy and economic statement sufficiently delineated that information. The court, however, held that petitions for nomination always must identify the specific vacancy sought because of their distinctive purpose. *Zapolsky*, 296 Ill. App. 3d at 734. According to the court, "[t]he apparent purpose of nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election." *Zapolsky*, 296 Ill. App. 3d at 734. The court concluded that to accomplish this purpose "[a] potential signatory to a nominating petition has the right to know the specific [***7] vacancy sought by the candidate so that the signatory may make an informed decision to sign the petition or support another candidate for the same vacancy." *Zapolsky*, 296 Ill. App. 3d at 734.

The conclusion in *Zapolsky* is questionable. *Zapolsky* premised its holding on its finding that "[t]he apparent purpose of nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election." *Zapolsky*, 296 Ill. App. 3d at 734. *Zapolsky* cited no authority for this finding. Other cases have held, more logically, that the primary purpose of the signature requirement is to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters. *Lockhart v. Cook County Officers Electoral Board*, 328 Ill. App. 3d 838, 844, 262 Ill. Dec. 968, 767 N.E.2d 428 (2002); *Huskey v. Municipal Officers Electoral Board*, 156 Ill.

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*App. 3d 201, 206, 108 Ill. Dec. 859, 509 N.E.2d 555 (1987); Merz v. Volberding, 94 Ill. App. 3d 1111, 1118, 50 Ill. Dec. 520, 419 N.E.2d 628 (1981); [***8] Briscoe v. Kusper, 435 F.2d 1046, 1054 (7th Cir. 1970).*

We need not decide whether to adopt the *Zapolsky* holding in the Second District, however. Unlike *Zapolsky* and unlike *Lewis*, here petitioner did not identify which of the two offices he sought on *any* [***858] of his nominating papers. A candidate's description of the office he seeks may not create "basis for confusion as to the office for which the nominating papers were filed." *Lewis*, 63 Ill. 2d at 53. In *Lewis*, the supreme court held that the failure to specifically identify the office sought in a statement of candidacy was excused where other nominating papers did so. *Lewis*, 63 Ill. 2d at 53. Here none of [***1063] the nominating papers indicate which of the two trustee offices petitioner sought. As a result, it is not clear from the nominating papers which trustee office petitioner intended to run for. This constitutes a basis for confusion as to the office for which the nominating papers were filed.

Petitioner argues that his general description of the office he sought was sufficient because nominating papers are considered filed for the full-term office unless [***9] otherwise specified. According to petitioner, only a candidate seeking to fill an office created by a vacancy need give a specific description of the office he seeks because a vacancy is "an exception to the statutory scheme." Petitioner premises this assertion on the fact that the statute provides for trustees to serve a four-year term. 65 ILCS 5/3.1--25--5 (West 2000). The trouble with this argument is that the statute also provides for trustees to serve less than a four-year term where they fill a vacancy. 65 ILCS 5/3.1--10--50(b) (West 2000). Thus, an office created by a vacancy is not "an exception to the statutory scheme" but, rather, specifically provided for by statute.

Petitioner, in essence, asks us to create a default rule that a general description of an office sought is presumed to refer to the full-term office unless otherwise specified. We have found no authority that supports such a rule. Under *Lewis*, a candidate must make clear the office that he seeks somewhere in his nominating papers. We do not find this rule unduly burdensome such that we need qualify it today. Accordingly, petitioner's nominating papers [***10] are invalid because he failed to specify which of the two trustee positions he sought.

Petitioner additionally argues that the Electoral Board was estopped to remove his name from the ballot because Lakemoor published a document listing available offices that classified both the two-year and the four-year trustee offices as "trustee." Before an estoppel against a public body can be found, it must be shown that

an affirmative act occurred on the part of the governmental body that induced substantial reliance by the litigant. *Schumann v. Kumarich*, 102 Ill. App. 3d 454, 460, 58 Ill. Dec. 157, 430 N.E.2d 99 (1981). Petitioner does not even argue that he relied on the document in failing to specify which of the two trustee positions he sought. Nor can he. The same document made clear that there were two types of trustee offices available and even admonished petitioner to consult competent legal counsel in filing his petitions for nomination. The Electoral Board was not estopped to remove petitioner's name from the ballot.

[***1064] The judgment of the circuit court of McHenry County is affirmed.

Affirmed.

KAPALA, J., concurs.

DISSENT BY: GILLERAN JOHNSON

DISSENT

JUSTICE GILLERAN JOHNSON, [***11] dissenting:

I respectfully dissent. I believe that the petitioner complied with section 7--10 of the Election Code (10 ILCS 5/7--10 (West 2000)), which requires that a candidate's nominating papers state the office that the candidate seeks.

[***859] Specifically, section 7--10 of the Election Code provides that the statement of candidacy must state the candidate's name, his political party, his place of residency, and the office he seeks. 10 ILCS 5/7--10 (West 2000). The statement of candidacy must also be notarized. 10 ILCS 5/7--10 (West 2000). Additionally, section 7--10 of the Election Code provides that a candidate's petitions for nomination be uniform in size, contain a certain number of signatures, and be fastened together in book form. 10 ILCS 5/7--10 (West 2000). Each nominating petition must state the candidate's name, his address, and the office he seeks. 10 ILCS 5/7--10 (West 2000).

In accordance with section 7--10 of the Election Code, the petitioner stated, in both his nominating petition and statement of candidacy, that he sought the office of "trustee." [***12] That the petitioner did not designate whether he desired a four-year or two-year term did not render his description of the office insufficient. As noted above, section 7--10 of the Election Code sets out the precise form of a candidate's nominating papers. However, nowhere in section 7--10 of the Election Code does it require a candidate to designate the term of the office he desires. See 10 ILCS 5/7--10 (West 2000).

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The majority's imposition of such a requirement on a candidate that he state the length of term he desires is, in the present case, superfluous, as the term of office of a trustee is defined by statute. Particularly, the Illinois Municipal Code (65 ILCS 5/3.1--25--5 (West 2000)) (the Municipal Code) provides: "In each village incorporated under this Code, the electors of the village shall elect 6 trustees. The term of office of the trustees shall be 4 years ***."

Although the Municipal Code also provides for trustees to serve less than four years in instances where they fill a vacancy (65 ILCS 5/3.1--10--50 (West 2000)), this does not contravene the general rule that a trustee is an elected [***13] four-year position. The majority's position that there was a basis for confusion herein is therefore flawed. It was obvious that the petitioner was not seeking to fill a vacancy. The [*1065] petitioner's nominating petition and statement of candidacy clearly indicated that the petitioner was seeking the position of trustee, which by statute is defined with a four-year term. Accordingly, the majority's suggestion that there was confusion over how long a term of office the petitioner was seeking is unfounded.

Even if section 7--10 of the Election Code did require the petitioner to state the length of the term he sought, such an omission was inconsequential, and the Electoral Board should have found that the petitioner substantially complied. It is a fundamental principle that access to a place on the ballot is a substantial right and not lightly to be denied. *Nolan v. Cook County Officers Electoral Board*, 329 Ill. App. 3d 52, 55, 263 Ill. Dec. 456, 768 N.E.2d 216 (2002). The petitioner's failure to describe the position he sought more precisely was, at maximum, a minor error. A minor error in a candidate's nominating papers should not result in a candidate's removal from the [***14] ballot. *Sullivan v. County Officers Electoral Board*, 225 Ill. App. 3d 691, 693, 167 Ill. Dec. 834, 588 N.E.2d 475 (1992).

I am mindful that compliance with section 7--10 of the Election Code has been held to be mandatory and not directory. See *Bowe v. Chicago Electoral Board*, 79 Ill. 2d 469, 470, 38 Ill. Dec. 756, 404 N.E.2d 180 (1980). However, substantial compliance has been held, in some circumstances, to satisfy even certain mandatory requirements of the Election Code, including section 7--10. See *Courtney v. County Officers Electoral Board*, 314 Ill. App. 3d 870, 876, [**860] 247 Ill. Dec. 861, 732 N.E.2d 1193 (2000) (finding that the candidate had substantially complied with section 7--10 of the Election Code even though he failed to simultaneously file his nominating petitions with his statement of candidacy); *Panarese v. Hosty*, 104 Ill. App. 3d 627, 628-29, 60 Ill.

Dec. 434, 432 N.E.2d 1333 (1982) (finding that the candidate substantially complied with section 7--10 of the Election Code even though he omitted his street and number from his nominating petition); *Madden v. Schumann*, 105 Ill. App. 3d 900, 903, 61 Ill. Dec. 684, 435 N.E.2d 173 (1982) [***15] (holding that the candidate's omission of the phrase "is a registered voter" from the circulator's oath, as required by section 7--10 of the Election Code, was a technical deviation that did not warrant removal from the ballot); *Stevenson v. County Officers Electoral Board*, 58 Ill. App. 3d 24, 26, 15 Ill. Dec. 571, 373 N.E.2d 1043 (1978) (finding that the candidate's failure to number his nominating petitions consecutively, as required by section 7--10 of the Election Code, was a mere technical deficiency that did not render his nominating papers invalid).

Even *Lewis*, upon which the majority hangs its hat, establishes that a candidate can satisfy section 7--10 of the Election Code with substantial compliance. The *Lewis* court specifically held that the candidate "substantially complied" with section 7--10 of the Election Code even though he failed to describe the particular vacancy that he was seeking in his statement of candidacy. *Lewis*, 63 Ill. 2d at 53. [*1066] Although the *Lewis* court predicated its finding of substantial compliance on the fact that the candidate's nominating papers as a whole did describe the particular vacancy that the candidate [***16] was seeking, describing a particular vacancy in this case was not necessary because, as noted above, the petitioner was not seeking a vacancy. What was required, rather, was that the petitioner state the office he was seeking. This, I believe, the petitioner did.

On a final note, the provisions of the Electoral Code are designed to protect the integrity of the electoral process. *Welch v. Johnson*, 147 Ill. 2d 40, 56, 167 Ill. Dec. 989, 588 N.E.2d 1119 (1992). Furthermore, villages such as Lakemoor have a legitimate interest in regulating the number of candidates on the ballot. Yet, when access to the ballot is involved, the restriction on that access should require the least drastic measure to achieve these ends. In this case, removing the petitioner from the ballot was a drastic measure that did little to protect the integrity of the electoral process. Moreover, the Village of Lakemoor's interests in this case were far outweighed by the petitioner's right to access on the ballot and the voters' right to elect a candidate of their choice. Frank Heabler should have been listed on the ballot for the April 1, 2003, election as a candidate for trustee.

For the above [***17] reasons, I believe the Electoral Board's removal of the petitioner from the ballot was erroneous.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR THE OFFICE OF
SCHOOL BOARD TRUSTEE IN THE BUREAU, HENRY, STARK REGIONAL DISTRICT**

JON A. ZAHM,

Petitioner-Objector,

v.

LARRY E. WILCOXEN,

Respondent-Candidate.

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS
13 JAN -3 PM 4:14

VERIFIED OBJECTOR'S PETITION

INTRODUCTION

Now comes Jon A. Zahm (the "Objector"), and he states as follows:

1. The Objector resides at 14910 Osco Road, Osco, in Henry County, Osco Township Illinois, 61274, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this petition ("Petition") is that of a voter who desires that the laws governing the filing of nomination papers for the Office of School Board Trustee in the Bureau, Henry, Stark Regional District are properly complied with and that only qualified candidates, appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers (the "Nomination Papers") of Larry E. Wilcoxen (the "Candidate") as a candidate for nomination to the office of School Board Trustee in the Bureau, Henry, Stark Regional District (the

“Office”) to be voted on at the 9th of April, 2013 (the “Election”). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:

4. The Candidate’s nomination papers, petition sheets and statement of candidacy do not specify whether the Candidate is seeking to be elected to a full term or to fill an unexpired vacancy in the office of School Board Trustee for the Bureau, Henry, Stark Regional District. By information and belief, at the April 9, 2013 elections, 3 candidates for the office of School Board Trustee of the Bureau, Henry, Stark Regional District will be elected for a full term, and one for an unexpired 4-year vacancy, and one for an unexpired 2-year vacancy.

5. Because the Candidate does not specify whether he is seeking to fill a full term or one of the unexpired vacancies, the Candidate has not properly specified which of the offices he is seeking. Leaving the petitions blank in this regard potentially gives the candidate great advantage as to which term they circle on the form, after signatures are gathered, depending on the gender and geography of others who file for specific seats available.

6. For the reasons specified above the Candidate’s nomination papers do not substantially comply with the requirements of the Illinois Election Code and therefore the Candidate’s Nomination Papers are invalid.

WHEREFORE, the Objector requests a hearing on the objections stated herein, an examination by the Electoral Board of the official records relating to the matters alleged herein, a ruling that the Nomination Papers are invalid as not lawful and a ruling that the name of the Candidate Larry E. Wilcoxon shall not appear on the ballot for election to the office of School Board Trustee for the Bureau, Henry, Stark Regional District.

for A. Zahm

The Objector Jon A. Zahm

Subscribed and sworn to before me this 3rd day of January, 2013.

Julie N. Hager
Notary Public



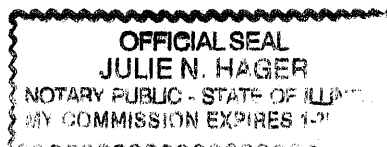
STATE OF ILLINOIS)
) SS.
COUNTY OF HENRY)

The undersigned, Jon A. Zahm., under oath deposes and says that he is the Objector identified in the attached Verified Objector's Petition, and that he has reviewed the allegations contained in said Petition and is familiar with the matters alleged therein and that such allegations are true to the best information available and belief.

Jon A Zahm
Objector

Subscribed and Sworn to before me
this 3rd. day of January, 2013

Julie N Hager
NOTARY PUBLIC



STATEMENT OF CANDIDACY

NONPARTISAN

NAME	ADDRESS-ZIP CODE	OFFICE	CITY, VILLAGE OR SPECIAL DISTRICT
LARRY E. WILCOXEN	310 Red Oak Rd. P.O. Box 65 Walnut, IL 61376-0065	COMMISSIONER REGIONAL School Trustee	Bureau, Henry-Stark County

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

STATE OF ILLINOIS)

County of BUREAU)

SS.

I, LARRY E. WILCOXEN being first duly sworn (or affirmed), say that I reside at 310 RED OAK ROAD in the City, (Village) Unincorporated Area (circle one) of WALNUT (if unincorporated, list municipality that provides postal service) Zip Code 61376 in the County of Bureau State of Illinois; that I am a qualified voter therein, that I am a candidate for Nomination/Election to the office of COMMISSIONER in the Bureau-Henry-Stark County
Name of City, Village or Special District

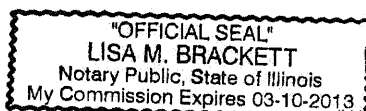
to be voted upon at the election to be held on APRIL 9, 2013 (date of election) and that I am legally qualified to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official ballot for Nomination/Election to the office of _____

**RECEIVED BY
MAIL**

Larry E. Wilcoxen
(Signature of Candidate)

Signed and sworn to (or affirmed) by Larry E. Wilcoxen before me, on December 10, 2012
(Name of Candidate) (insert month, day, year)

(SEAL)



5:8 AM 61 DEC 21

Lisa M. Brackett
(Notary Public's Signature)

STATE BOARD OF ELECTIONS
PRINCIPAL OFFICE

This section will be returned to
you when the Statement is filed
with the County Clerk.

(COMPLETE BUT DO NOT DETACH)

REGIONAL BOARD OF SCHOOL TRUSTEES

Office or Position of Employment for which this statement is filed

(TYPE OR HAND PRINT)

LARRY E. WILCOXEN

Name

310 RED OAK ROAD PO BOX 65

Address

WALNUT

City

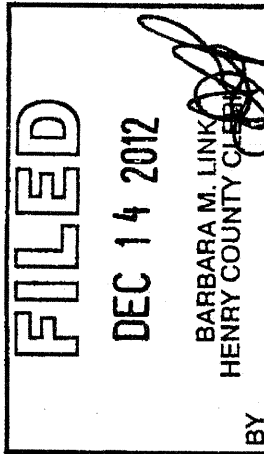
ILLINOIS

State

61376-0065

ZIP Code

Receipt is hereby acknowledged
of your Statement of Economic
Interests, filed pursuant to the
Illinois Governmental Ethics Act. The
Statement was filed on this date:



ATTACH TO PETITION

10 ILCS 5/7-10.1

Suggested
Revised July, 2004
SBE No. P-1C

LOYALTY OATH
(OPTIONAL)

United States of America

State of Illinois

)
)
)

SS.

I, LARRY E. WILCOXEN, do swear (or affirm) that I am a citizen of the United States and the State of Illinois, that I am not affiliated directly or indirectly with any communist organization or any communist front organization, or any foreign political agency, party, organization or government which advocates the overthrow of constitutional government by force or other means not permitted under the Constitution of the United States or the Constitution of this State; that I do not directly or indirectly teach or advocate the overthrow of the government of the United States or of this State or any unlawful change in the form of the governments thereof by force or any unlawful means.

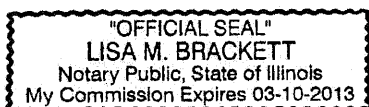
Larry E. Wilcoxen
(Signature of Candidate)

Signed and sworn to (or affirmed) by LARRY E. WILCOXEN before me,
(Name of Candidate)

on December 10, 2012
(insert month, day, year)

Lisa M. Brackett
(Notary Public's Signature)

(SEAL)



**PETITION FOR NOMINATION FOR
MULTI-COUNTY REGIONAL SCHOOL TRUSTEES
TO BE FILED WITH THE STATE BOARD OF ELECTIONS**

We, the undersigned, being 50 or more of the voters qualified to vote, hereby petition that Larry E. Wilcoxen who resides at 310 Red Oak Road in Township (or Road District) Walnut in Bureau County, shall be a candidate for the office of **MEMBER OF THE REGIONAL BOARD OF SCHOOL TRUSTEES** of Bureau Henry Stark Region (Counties within region) full term or vacancy (circle one) to be voted for at the Consolidated Election to be held April 9, 2013 (date of election).

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

NAME (VOTER'S SIGNATURE)	STREET ADDRESS OR RR NUMBER	CITY, TOWN OR VILLAGE	IL	COUNTY
1 <u>AP</u>	<u>1030 Hwy 111</u>	<u>Princeton</u>	IL	<u>Bureau</u>
2 <u>Shelly Capps</u>	<u>219 S. Prospect</u>	<u>Cambridge</u>	IL	<u>Henry</u>
3 <u>Mary Kelly</u>	<u>44 Carmieux Dr.</u>	<u>Geneseo</u>	IL	<u>Henry</u>
4 <u>Rainie Proche</u>	<u>1130 Meadow Lane</u>	<u>Colona</u>	IL	<u>Henry</u>
5 <u>Jim Brand</u>	<u>406 E. Van Buren St.</u>	<u>Ohio</u>	IL	<u>Bureau</u>
6 <u>Angie Carpenter</u>	<u>Box 67</u>	<u>Van Oran</u>	IL	<u>Bureau</u>
7 <u>D. J. M. L. Ce</u>	<u>111 W. Church St.</u>	<u>Princeton</u>	IL	<u>Bureau</u>
8			IL	
9			IL	
10			IL	
11			IL	
12			IL	

State of ILLINOIS

County of HENRY

SS.

I, William Kestel (Circulator's Name) do hereby certify that I reside at 713 Hawthorne Ct. in the City Village/Unincorporated Area (circle one) of GENESEO (if unincorporated, list municipality that provides postal service) (Zip Code) 61254 County of HENRY State of ILLINOIS that I am 18 years of age or older, that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence, not more than 90 days preceding the last day for filing of the petitions and are genuine and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters of the political division in which the candidate is seeking elective office, and that the foregoing statements are correctly stated, as above set forth.

**RECEIVED BY
MAIL**

Signed and sworn to before me by

WILLIAM KESTEL
(Name of Circulator)

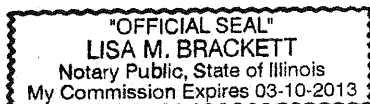
William Kestel
(Circulator's Signature)

before me, on 11-14-12
(insert month, day, year)

Lisa M. Brackett
(Notary Public's Signature)

(SEAL)

SHEET NO. 1



12 DEC 19 AM 8:51
STATE BOARD OF ELECTIONS
PRINCIPAL OFFICE

Harrington, Bernadette

From: Jon Zahm [goliathslayers@gmail.com]
Sent: Monday, January 21, 2013 2:49 PM
To: Herman, David
Cc: jon@thegoliathslayer.com; lwilcxn@mchsi.com; Harrington, Bernadette; Sandvoss, Steve
Subject: Re: Zahm v. Wilcoxon - 13 SOEB CE 101

I move for summary judgment on this case to not place the candidate objected to from the ballot as the law and precedent is very clear.

Article 10 of the Election Code governs the making of nominations in non-partisan and independent races. Section 10-4 governs the form of the petitions and Section 10-5 governs the form of the statement of candidacy and the filing of the statement of economic interest. Section 10-4 requires that the nominating petitions heading give "the information as to the name of the candidate or candidates in whose behalf such petition is signed; the office; the party; place of residence; and such other information or wording as required to make same valid..." Section 10-5 requires that the statement of candidacy shall contain "the address of such candidate, shall state that the candidate is qualified for the office specified..."

The question that needs to be addressed is whether the failure of the candidates to state sufficiently the office invalidates their nominating papers. The First District Appellate Court addressed the issue of voter confusion because of the improper designation of the office by the candidate in *Zapolsky v. Cook County Officers Electoral Bd.*, 296 Ill.App.3d 731 (1st Dist. 1998). In that case, the appellate court held that the failure to specify on a nominating petition sheet whether the candidate was seeking a full or partial term invalidates the petitions when there are both full and partial terms of the same office on the ballot in the same election. When both full and partial terms for the same office are on the ballot in the same election, the failure to specify on petitions which term the candidate is seeking fails to strictly or substantially comply with Election Code provisions, and causes a basis for confusion to the voters as to which of the possible offices this candidate is seeking. The court went on to say that where there are numerous vacancies in a district that are up for election, failing to specify the office sought is fatal. The court determined that:

The apparent purpose of the nominating petitions signed by the voters is to expand the informed participation of members of the respective parties in their primary election. Nominating petitions should be free from a "basis for confusion" as to the office for which they are filed. A potential signatory to a nominating petition has the right to know the specific vacancy sought by a candidate so that the signatory may make an informed decision to sign the petition of support another candidate for the same vacancy. *Zapolsky*, at 735.

**Respectfully,
Jon A. Zahm**

On Fri, Jan 18, 2013 at 5:31 PM, Herman, David <dhherman@giffinwinning.com> wrote:

Pursuant to the case management conference held today relating to the pending objection to your nomination papers filed by Mr. Zahm, I order the following:

1. This matter involves a legal dispute as to the legal sufficiency of the nominations filed by the Candidate and there is no need to hold an evidentiary hearing in this matter as acknowledged by the parties present during today's pre-hearing conference (in person and by phone). Accordingly, no evidentiary hearing will be held in this matter and the objection will be ruled upon based on the filings of the parties.
2. The deadlines set forth in the Rules of Procedure adopted by the State Board of Elections Sitting as the Duly Constituted State Officers Electoral Board and published on the State Board of Elections website must be strictly adhered to by the parties.

- a. Candidate's Motion to Strike and/or Dismiss or other similar motion (and memorandum of law) and Objector's Motion for Summary Judgment or similar motion (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel (all email addresses are in the to and from line of this email) on or before 5:00 p.m. central time on Monday, January 21, 2013.
 - b. Objector's Response to Candidate's filing (and memorandum of law) and Candidate's Response to Objector's filing (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 5:00 p.m. central time on Tuesday, January 22, 2013.
 - c. Objector's Reply to Candidate's Response (and memorandum of law) and Candidate's Reply to Objector's Response (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 5:00 p.m. central time on Wednesday, January 22, 2013.
3. The next hearing before the State Officers Electoral Board is set for Wednesday, January 30, 2013 at 3:00 p.m. central time at the State Board of Elections Offices (in Chicago and Springfield). At that time the State Officers Electoral Board will consider the Hearing Officer's Report and Recommendation on the pending objection to your candidacy.
 4. The parties Exceptions to the Report of the Hearing Officer, if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 3:00 p.m. central time on Tuesday, January 29, 2013.
 5. Attached are the entries of appearances filed by each party at the conference held today.
 6. Acknowledge receipt of this email order.

Dated: 1/18/2013

David Herman

Hearing Officer

Zahm v. Kested
13 SOEB CE 102

Candidate: William Kested

Office: Regional Board of School Trustee, Bureau/Henry/Stark Counties

Party: N/A

Objector: Jon A. Zahm

Attorney For Objector: Pro Se

Attorney For Candidate: Pro Se

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Candidate's nominating papers fail to specify whether the candidate is seeking to be elected to a full term or to fill an unexpired term resulting from a vacancy in said office. There are three terms up for election: Full term, 4 year unexpired term and 2 year unexpired term.

Dispositive Motions: Objector: Motion for Summary Judgment; Candidate: Submitted a non-designated e-mail response.

Binder Check Necessary: No

Hearing Officer: David Herman

Hearing Officer Findings and Recommendation: Section 10-4 of the Election Code sets forth requirements of a nominating petition that must be fulfilled in order for a candidate's name to be placed on the ballot. Specifically, 10-4 requires petitions for nomination to include, among other things, the office the candidate seeks. It also imposes a penalty for noncompliance, such that no signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of Section 10-4 are complied with.

Here, by failing to specify whether he is seeking to be elected to a full term or to fill an unexpired term resulting from a vacancy in office, Candidate did not identify the specific office sought in any of his nominating papers. Similar to the candidate in Heabler v. Municipal Electoral Board of the Village of Lakemoor, 338 Ill. App. 3d 1059 (2d Dist. 2003), the failure to specify the term created a basis for confusion as to the office for which Candidate filed his nominating papers. Accordingly, Candidate's nominating papers are invalid.

On this basis, the Hearing Officer recommends that the Board grant the objection to the Candidate's nominating papers based on noncompliance with Section 10-4 of the Election Code and not certify the Candidate's name to the ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATE FOR THE OFFICE OF SCHOOL BOARD
TRUSTEE IN THE BUREAU, HENRY, STARK REGIONAL DISTRICT**

Jon A. Zahm,)	
)	
Petitioner-Objector,)	
)	
v.)	File No. 13 SOEB CE 102
)	
William B. Kested,)	
)	
Respondent-Candidate.)	

RECOMMENDATION OF HEARING EXAMINER

TO: Jon A. Zahm	William B. Kested
14910 Osco Road	713 Hawthorne Court
Osco, Illinois 61274	Geneseo, Illinois 61254
Tel: (309) 522-5008	Cell: (309) 945-7590
Cell: (630) 946-8683	<u>wkested@yahoo.com</u>
<u>jon@thecoliathslayer.com</u>	

I. Procedural History

On December 19, 2012, Candidate filed his Statement of Candidacy, Statement of Economic Interests, Loyalty Oath and Nomination Petitions. In his Statement of Candidacy, Candidate listed the office he was seeking as "Regional Board of School Trustees" in the Bureau-Henry-Stark-Roe Counties. On his nomination petitions, Candidate listed the office he was seeking as "Member of the Regional Board of School Trustees of Bureau Henry Stark Region."

Candidate failed to indicate on any of his nomination papers whether he was running for a full term or vacancy for the Consolidated Election to be held on April 9, 2013.

Objector filed his Verified Objector's Petition on January 3, 2013, alleging that the Candidate's nomination papers were invalid because Candidate did not specify whether he was seeking to fill a full term or one of the unexpired vacancies. Objector alleged that, on information and belief, at the April 9, 2013 election, 3 candidates were to be elected for a full term, one for an unexpired 4-year vacancy, and one for an unexpired 2-year vacancy. Objector asked that Candidate not be allowed to appear on the ballot for election to the office of School Board Trustee for the Bureau, Henry, Stark Regional District.

On January 18, 2013, Candidate filed a response to Objector's Petition, stating there was a flaw with the blank nomination petition form provided on the State Board of Election's website.

Objector filed a Motion for Summary Judgment on January 21, 2013, stating that Candidate's nomination petitions failed to conform to the requirements of section 10-4 of the Election Code, and that pursuant to Zaplosky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731 (1st

Dist. 1998), when a candidate fails to specify whether the candidate sought a full or partial term, the candidate's petitions are invalid.

II. Objection Based on Non-Compliance of Nominating Papers with 10 ILCS 5/10-4.

A. Objector's Argument

In his Petition, Objector asserts that the Candidate's nominating papers fail to specify whether Candidate is seeking to be elected to a full term or to fill an unexpired vacancy, and therefore fail to state the office sought by Candidate, as required by section 10-4 of the Election Code. As a result, Objector asserts that the Candidate's nominating petitions should be stricken in whole and Candidate should not be allowed to appear on the ballot for election.

B. Candidate's Argument

The Candidate's response to Objector's Petition argues a flaw in the nomination petition form.

C. Analysis

"The question of interpreting whether a candidate complied substantially with the Election Code is a question of law." Pascente v. County Officers Electoral Board of the County of Cook, 373 Ill. App. 3d 871, 873 (1st Dist. 2007) citing Salgado v. Marquez, 356 Ill. App. 3d 1072, 1075 (2d Dist. 2005).

Section 10-4 of the Election Code sets forth the requirements of a nominating petition that must be filed prior to a candidate's name being placed on the ballot. See Wollan v. Jacoby, 274 Ill. App. 3d 388, 393 (1st Dist. 1995); 10 ILCS 5/10-4. That section requires petitions for nomination to include, among other things, the office the candidate seeks. See 10 ILCS 5/10-4. It also imposes a penalty for noncompliance, such that: "no signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with." Wollan, 274 Ill. App. 3d at 393 quoting 10 ILCS 5/10-4.

Section 10-4 applies to persons seeking nomination as independent or nonpartisan candidates in a general election. Wollan, 274 Ill. App. 3d at 395. A similar provision of the Election Code, section 7-10, applies to persons seeking nomination as political party candidates in a primary election. Id. The Second District has held, in Salgado v. Marquez, 356 Ill. App. 3d 1072 (2d Dist. 2005), that the analysis and result of question of whether nomination petitions require candidates to set forth "the office" they are seeking is the same under sections 10-4 and 7-10 of the Election Code. See Salgado, 356 Ill. App. 3d at 1075-1076.

"A description of the office sought by a candidate is generally sufficient where there is 'no basis for confusion as to the office for which the nominating papers were filed.'" Heabler v. Municipal Electoral Board of the Village of Lakemoor, 338 Ill. App. 3d 1059, 1061 (2d Dist. 2003) quoting Lewis v. Dunne, 63 Ill. 2d 48, 53 (1976). "There is no basis for confusion where, looking at the nominating papers as a whole, it is clear which position the candidate seeks." Id.

In Heabler, the candidate filed nomination papers to be a candidate for "trustee" of the Village of Lakemoor. Heabler, 338 Ill. App. 3d at 1060. The candidate's nominating papers included both a statement of candidacy and petitions for nomination signed by voters. Id. Similar to the facts

of this case, in Heabler, there were different types of trustee offices to be filled in the election; one type a full-term vacancy and carrying a term of four years, the other type created by a vacancy and carrying a term of 2 years. Id. In that case, none of the nominating papers filed by the candidate indicated which of the trustee offices he sought, but identified the office only as "trustee." Id. An incumbent trustee filed an objection to candidate's nomination papers on the basis that they did not identify which type of trustee position candidate sought. Heabler, 338 Ill. App. 3d at 1060.

There, the Second District found that because none of the candidate's nominating papers indicated which of the two trustee offices petitioner sought-full term or vacancy-there was a basis for confusion as to the office for which nominating papers were filed, and the nominating papers were invalid. Id. at 1062-1063. In its decision, the Second District distinguished the holding in Lewis v. Dunne, 63 Ill. 2d 48 (1976) (holding that nominating papers were valid because taken *as a whole*, the office sought was clearly identified), and questioned the conclusion reached by the First District in Zaplosky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731 (1998) (holding that the failure to specify the precise office sought on petitions for nomination *per se* renders nominating papers invalid, even where the specific office is identified on other nominating papers).

Here, like the candidate in Heabler, Candidate did not identify the specific office sought in any of his nominating papers. This created a basis for confusion as to the office for which Candidate filed his nominating papers. Accordingly, Candidate's nominating papers are invalid and Objector's Petition should be granted.


It should be noted, however, that the dissent in Heabler strongly criticized the majority's opinion, finding that while section 7-10 of the Election Code requires a candidate to state the office sought, it does not require a candidate to designate the *term* of the office he desires. Heabler, 338 Ill. App. 3d at 1064.

Conclusion

Hearing Examiner recommends that:

1. The Board grant the objection to the Candidate's nominating papers based on non-compliance with 10 ILCS 5/10-4 and remove the Candidate's name from the ballot.

DATED: 1/25/13


David A. Herman, Hearing Examiner

CERTIFICATE OF SERVICE

Service of the foregoing document was made by sending a copy via e-mail transmission to the following parties:

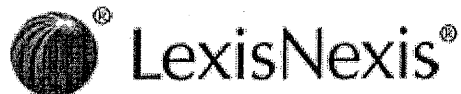
Jon A. Zahm
14910 Osco Road
Osco, Illinois 61274
jon@thecoliathslayer.com

William B. Kested
713 Hawthorne Court
Geneseo, Illinois 61254
wkested@yahoo.com

on this 25th day of January, 2013.

A handwritten signature in black ink, appearing to read 'D. A. Herman', is written over a horizontal line.

David A. Herman, Hearing Examiner



**FRANK HEABLER, JR., Petitioner-Appellant, v. MUNICIPAL OFFICERS
ELECTORAL BOARD OF THE VILLAGE OF LAKEMOOR and its Members
ROBERT KOEHL, DONALD POGGENSEE, and LENORE LUKAS-TUTIEN, in
Their Official Capacities; KATHERINE SCHULTZ, County Clerk of McHenry
County, in Her Official Capacity; LENORE LUKAS-TUTIEN, Village Clerk of
Lakemoor, in Her Official Capacity, Respondents-Appellees.**

No. 2-03-0345

APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

338 Ill. App. 3d 1059; 789 N.E.2d 854; 2003 Ill. App. LEXIS 563; 273 Ill. Dec. 680

May 5, 2003, Decided

SUBSEQUENT HISTORY: [***1] Released for Publication June 6, 2003. As Corrected June 2, 2003.

PRIOR HISTORY: Appeal from the Circuit Court of McHenry County. No. 03--MR--31. Honorable Michael J. Sullivan Judge, Presiding.

DISPOSITION: Affirmed.

COUNSEL: For Frank Heabler, Jr., Appellant: John L. Miller, Woerthwein & Miller, Chicago, IL.

For Robert Koehl, Lenore Lukas-Tutien, Donald Poggensee, Katherine Schultz and Village of Lakemoor, Appellees: Lisa M. Waggoner, The Waggoner Law Firm, P.C., Crystal Lake, IL

JUDGES: JUSTICE O'MALLEY delivered the opinion of the court. KAPALA, J., concurs. JUSTICE GILLERAN JOHNSON, dissenting.

OPINION BY: O'MALLEY

OPINION

[**855] [*1060] JUSTICE O'MALLEY delivered the opinion of the court:

Petitioner, Frank Heabler, Jr., appeals from the March 19, 2003, judgment of the circuit court of McHenry County that affirmed the decision of the Municipal Officers Electoral Board of the Village of Lake-

moor (the Electoral Board) sustaining objections to petitioner's nominating papers filed for the April 1, 2003, Village of Lakemoor (Lakemoor) trustee election. We affirm.

On January 13, 2003, petitioner filed nominating papers to be a candidate for trustee in the April 1, 2003, consolidated election in Lakemoor. The nominating papers included both a statement of candidacy and petitions for nomination that were signed by voters. There were two different types of trustee offices to be filled in the election. The first type was the full-term trustee office and carried a term of four years. The second [***2] type was created by a vacancy and carried a term of two [**856] years. A document distributed to candidates by Lakemoor stated that there were three four-year trustee offices and one two-year office to be filled in the election. The same document admonished the candidates to consult competent legal counsel in filing their petitions for nomination. Despite the two types of trustee offices available, petitioner identified the office he sought only as "trustee" on all of his nominating papers.

Ralph Brindise, an incumbent trustee who was also running in the April 1 election, objected to petitioner's nominating papers on the basis that they did not identify which type of trustee position petitioner sought. On February 3, 2003, the Electoral Board held a hearing on Brindise's objections. At the hearing, petitioner testified that the office he sought was trustee for a four-year term. On February 5, 2003, the Electoral Board sustained Brindise's objections, finding that petitioner had not identified which type of trustee office he was seeking in

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any of his nominating papers. As a result of this decision, petitioner's name was removed from the ballot. On March 19, 2003, the circuit court of McHenry [***3] County affirmed the Electoral Board's decision.

This court has granted accelerated review of this case under *Supreme Court Rule 311* (155 Ill. 2d R. 311). We review the decision of the Electoral Board *de novo* because it involves a question of law. *Brennan v. Kolman*, 335 Ill. App. 3d 716, 719, 269 Ill. Dec. 847, 781 N.E.2d 644 (2002).

On appeal, petitioner argues that his description of the office [*1061] sought as "trustee" was sufficient because a general description of an office is presumed to refer to the full-term office unless otherwise specified. We disagree.

A description of the office sought by a candidate is generally sufficient where there is "no basis for confusion as to the office for which the nominating papers were filed." *Lewis v. Dunne*, 63 Ill. 2d 48, 53, 344 N.E.2d 443 (1976). There is no basis for confusion where, looking at the nominating papers as a whole, it is clear which position the candidate seeks. *Lewis*, 63 Ill. 2d at 53.

In *Lewis*, a candidate for appellate judge described the office he sought only as "Judge of the Appellate Court of Illinois, First Judicial District" on his statement of candidacy. [***4] *Lewis*, 63 Ill. 2d at 50. The candidate properly described the office as "Judge of the Appellate Court of Illinois, First Judicial District, to fill the vacancy created by the retirement of the Honorable Robert E. English" on his petitions for nomination. *Lewis*, 63 Ill. 2d at 49-50. The candidate's nominating papers were challenged on the basis that the statement of candidacy did not describe the specific vacancy the candidate sought. *Lewis*, 63 Ill. 2d at 50. The supreme court held that the nominating papers were valid based on two factors. First, there was "no basis for confusion as to the office for which the nominating papers were filed." *Lewis*, 63 Ill. 2d at 53. Taken as a whole, the nominating papers, of which both the statement of candidacy and the petitions for nomination are part, clearly identified the office that the candidate sought because a specific description of the office was included in the petitions for nomination. *Lewis*, 63 Ill. 2d at 53. Second, there was nothing about the statement of candidacy itself that made it necessary for the specific description of the office to be included [***5] therein. The purpose of a statement of candidacy is to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election [**857] for the office he seeks. *Lewis*, 63 Ill. 2d at 53. The general description of the office is the functional equivalent of the specific description for this purpose. *Lewis*, 63 Ill. 2d at 53. Thus, there was no

reason for the statement of candidacy to contain more than a general description of the office where other nominating papers contained the specific description.

Zapolsky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731, 231 Ill. Dec. 210, 695 N.E.2d 1329 (1998), a First District case cited by respondent, held that the failure to specify the precise office sought on petitions for nomination *per se* renders nominating papers invalid even where the specific office is identified on other nominating papers. In *Zapolsky*, there were full-term offices and a vacancy to be filled in the election. *Zapolsky*, 296 Ill. App. 3d at 732. The candidate, however, described the office she sought on her petitions for nomination only as "'Commissioner of [***6] the [*1062] Metropolitan Water Reclamation District of Greater Chicago.'" *Zapolsky*, 296 Ill. App. 3d at 732. The candidate correctly identified the office in her statement of candidacy and economic statement as "'Commissioner of the Metropolitan Water Reclamation District of Greater Chicago to fill the vacancy for the unexpired two (2) year term.'" *Zapolsky*, 296 Ill. App. 3d at 732. As in *Lewis*, there was no basis for confusion as to the office for which the nominating papers were filed because the statement of candidacy and economic statement sufficiently delineated that information. The court, however, held that petitions for nomination always must identify the specific vacancy sought because of their distinctive purpose. *Zapolsky*, 296 Ill. App. 3d at 734. According to the court, "[t]he apparent purpose of nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election." *Zapolsky*, 296 Ill. App. 3d at 734. The court concluded that to accomplish this purpose "[a] potential signatory to a nominating petition has the right to know the specific [***7] vacancy sought by the candidate so that the signatory may make an informed decision to sign the petition or support another candidate for the same vacancy." *Zapolsky*, 296 Ill. App. 3d at 734.

The conclusion in *Zapolsky* is questionable. *Zapolsky* premised its holding on its finding that "[t]he apparent purpose of nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election." *Zapolsky*, 296 Ill. App. 3d at 734. *Zapolsky* cited no authority for this finding. Other cases have held, more logically, that the primary purpose of the signature requirement is to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters. *Lockhart v. Cook County Officers Electoral Board*, 328 Ill. App. 3d 838, 844, 262 Ill. Dec. 968, 767 N.E.2d 428 (2002); *Huskey v. Municipal Officers Electoral Board*, 156 Ill.

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2003 Ill. App. LEXIS 563, ***; 273 Ill. Dec. 680

*App. 3d 201, 206, 108 Ill. Dec. 859, 509 N.E.2d 555 (1987); Merz v. Volberding, 94 Ill. App. 3d 1111, 1118, 50 Ill. Dec. 520, 419 N.E.2d 628 (1981); [***8] Briscoe v. Kusper, 435 F.2d 1046, 1054 (7th Cir. 1970).*

We need not decide whether to adopt the *Zapolsky* holding in the Second District, however. Unlike *Zapolsky* and unlike *Lewis*, here petitioner did not identify which of the two offices he sought on *any* [***858] of his nominating papers. A candidate's description of the office he seeks may not create "basis for confusion as to the office for which the nominating papers were filed." *Lewis*, 63 Ill. 2d at 53. In *Lewis*, the supreme court held that the failure to specifically identify the office sought in a statement of candidacy was excused where other nominating papers did so. *Lewis*, 63 Ill. 2d at 53. Here none of [***1063] the nominating papers indicate which of the two trustee offices petitioner sought. As a result, it is not clear from the nominating papers which trustee office petitioner intended to run for. This constitutes a basis for confusion as to the office for which the nominating papers were filed.

Petitioner argues that his general description of the office he sought was sufficient because nominating papers are considered filed for the full-term office unless [***9] otherwise specified. According to petitioner, only a candidate seeking to fill an office created by a vacancy need give a specific description of the office he seeks because a vacancy is "an exception to the statutory scheme." Petitioner premises this assertion on the fact that the statute provides for trustees to serve a four-year term. 65 ILCS 5/3.1--25--5 (West 2000). The trouble with this argument is that the statute also provides for trustees to serve less than a four-year term where they fill a vacancy. 65 ILCS 5/3.1--10--50(b) (West 2000). Thus, an office created by a vacancy is not "an exception to the statutory scheme" but, rather, specifically provided for by statute.

Petitioner, in essence, asks us to create a default rule that a general description of an office sought is presumed to refer to the full-term office unless otherwise specified. We have found no authority that supports such a rule. Under *Lewis*, a candidate must make clear the office that he seeks somewhere in his nominating papers. We do not find this rule unduly burdensome such that we need qualify it today. Accordingly, petitioner's nominating papers [***10] are invalid because he failed to specify which of the two trustee positions he sought.

Petitioner additionally argues that the Electoral Board was estopped to remove his name from the ballot because Lakemoor published a document listing available offices that classified both the two-year and the four-year trustee offices as "trustee." Before an estoppel against a public body can be found, it must be shown that

an affirmative act occurred on the part of the governmental body that induced substantial reliance by the litigant. *Schumann v. Kumarich*, 102 Ill. App. 3d 454, 460, 58 Ill. Dec. 157, 430 N.E.2d 99 (1981). Petitioner does not even argue that he relied on the document in failing to specify which of the two trustee positions he sought. Nor can he. The same document made clear that there were two types of trustee offices available and even admonished petitioner to consult competent legal counsel in filing his petitions for nomination. The Electoral Board was not estopped to remove petitioner's name from the ballot.

[***1064] The judgment of the circuit court of McHenry County is affirmed.

Affirmed.

KAPALA, J., concurs.

DISSENT BY: GILLERAN JOHNSON

DISSENT

JUSTICE GILLERAN JOHNSON, [***11] dissenting:

I respectfully dissent. I believe that the petitioner complied with section 7--10 of the Election Code (10 ILCS 5/7--10 (West 2000)), which requires that a candidate's nominating papers state the office that the candidate seeks.

[***859] Specifically, section 7--10 of the Election Code provides that the statement of candidacy must state the candidate's name, his political party, his place of residency, and the office he seeks. 10 ILCS 5/7--10 (West 2000). The statement of candidacy must also be notarized. 10 ILCS 5/7--10 (West 2000). Additionally, section 7--10 of the Election Code provides that a candidate's petitions for nomination be uniform in size, contain a certain number of signatures, and be fastened together in book form. 10 ILCS 5/7--10 (West 2000). Each nominating petition must state the candidate's name, his address, and the office he seeks. 10 ILCS 5/7--10 (West 2000).

In accordance with section 7--10 of the Election Code, the petitioner stated, in both his nominating petition and statement of candidacy, that he sought the office of "trustee." [***12] " That the petitioner did not designate whether he desired a four-year or two-year term did not render his description of the office insufficient. As noted above, section 7--10 of the Election Code sets out the precise form of a candidate's nominating papers. However, nowhere in section 7--10 of the Election Code does it require a candidate to designate the term of the office he desires. See 10 ILCS 5/7--10 (West 2000).

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The majority's imposition of such a requirement on a candidate that he state the length of term he desires is, in the present case, superfluous, as the term of office of a trustee is defined by statute. Particularly, the Illinois Municipal Code (65 ILCS 5/3.1--25--5 (West 2000)) (the Municipal Code) provides: "In each village incorporated under this Code, the electors of the village shall elect 6 trustees. The term of office of the trustees shall be 4 years ***."

Although the Municipal Code also provides for trustees to serve less than four years in instances where they fill a vacancy (65 ILCS 5/3.1--10--50 (West 2000)), this does not contravene the general rule that a trustee is an elected [***13] four-year position. The majority's position that there was a basis for confusion herein is therefore flawed. It was obvious that the petitioner was not seeking to fill a vacancy. The [*1065] petitioner's nominating petition and statement of candidacy clearly indicated that the petitioner was seeking the position of trustee, which by statute is defined with a four-year term. Accordingly, the majority's suggestion that there was confusion over how long a term of office the petitioner was seeking is unfounded.

Even if section 7--10 of the Election Code did require the petitioner to state the length of the term he sought, such an omission was inconsequential, and the Electoral Board should have found that the petitioner substantially complied. It is a fundamental principle that access to a place on the ballot is a substantial right and not lightly to be denied. *Nolan v. Cook County Officers Electoral Board*, 329 Ill. App. 3d 52, 55, 263 Ill. Dec. 456, 768 N.E.2d 216 (2002). The petitioner's failure to describe the position he sought more precisely was, at maximum, a minor error. A minor error in a candidate's nominating papers should not result in a candidate's removal from the [***14] ballot. *Sullivan v. County Officers Electoral Board*, 225 Ill. App. 3d 691, 693, 167 Ill. Dec. 834, 588 N.E.2d 475 (1992).

I am mindful that compliance with section 7--10 of the Election Code has been held to be mandatory and not directory. See *Bowe v. Chicago Electoral Board*, 79 Ill. 2d 469, 470, 38 Ill. Dec. 756, 404 N.E.2d 180 (1980). However, substantial compliance has been held, in some circumstances, to satisfy even certain mandatory requirements of the Election Code, including section 7--10. See *Courtney v. County Officers Electoral Board*, 314 Ill. App. 3d 870, 876, [**860] 247 Ill. Dec. 861, 732 N.E.2d 1193 (2000) (finding that the candidate had substantially complied with section 7--10 of the Election Code even though he failed to simultaneously file his nominating petitions with his statement of candidacy); *Panarese v. Hosty*, 104 Ill. App. 3d 627, 628-29, 60 Ill.

Dec. 434, 432 N.E.2d 1333 (1982) (finding that the candidate substantially complied with section 7--10 of the Election Code even though he omitted his street and number from his nominating petition); *Madden v. Schumann*, 105 Ill. App. 3d 900, 903, 61 Ill. Dec. 684, 435 N.E.2d 173 (1982) [***15] (holding that the candidate's omission of the phrase "is a registered voter" from the circulator's oath, as required by section 7--10 of the Election Code, was a technical deviation that did not warrant removal from the ballot); *Stevenson v. County Officers Electoral Board*, 58 Ill. App. 3d 24, 26, 15 Ill. Dec. 571, 373 N.E.2d 1043 (1978) (finding that the candidate's failure to number his nominating petitions consecutively, as required by section 7--10 of the Election Code, was a mere technical deficiency that did not render his nominating papers invalid).

Even *Lewis*, upon which the majority hangs its hat, establishes that a candidate can satisfy section 7--10 of the Election Code with substantial compliance. The *Lewis* court specifically held that the candidate "substantially complied" with section 7--10 of the Election Code even though he failed to describe the particular vacancy that he was seeking in his statement of candidacy. *Lewis*, 63 Ill. 2d at 53. [*1066] Although the *Lewis* court predicated its finding of substantial compliance on the fact that the candidate's nominating papers as a whole did describe the particular vacancy that the candidate [***16] was seeking, describing a particular vacancy in this case was not necessary because, as noted above, the petitioner was not seeking a vacancy. What was required, rather, was that the petitioner state the office he was seeking. This, I believe, the petitioner did.

On a final note, the provisions of the Electoral Code are designed to protect the integrity of the electoral process. *Welch v. Johnson*, 147 Ill. 2d 40, 56, 167 Ill. Dec. 989, 588 N.E.2d 1119 (1992). Furthermore, villages such as Lakemoor have a legitimate interest in regulating the number of candidates on the ballot. Yet, when access to the ballot is involved, the restriction on that access should require the least drastic measure to achieve these ends. In this case, removing the petitioner from the ballot was a drastic measure that did little to protect the integrity of the electoral process. Moreover, the Village of Lakemoor's interests in this case were far outweighed by the petitioner's right to access on the ballot and the voters' right to elect a candidate of their choice. Frank Heabler should have been listed on the ballot for the April 1, 2003, election as a candidate for trustee.

For the above [***17] reasons, I believe the Electoral Board's removal of the petitioner from the ballot was erroneous.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR THE OFFICE OF
SCHOOL BOARD TRUSTEE IN THE BUREAU, HENRY, STARK REGIONAL DISTRICT**

JON A. ZAHM,

Petitioner-Objector,

v.

WILLIAM KESTED,

Respondent-Candidate.

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS
13 JAN -3 PM 4:13

VERIFIED OBJECTOR'S PETITION

INTRODUCTION

Now comes Jon A. Zahm (the "Objector"), and he states as follows:

1. The Objector resides at 14910 Osco Road, Osco, in Henry County, Osco Township Illinois, 61274, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this petition ("Petition") is that of a voter who desires that the laws governing the filing of nomination papers for the Office of School Board Trustee in the Bureau, Henry, Stark Regional District are properly complied with and that only qualified candidates, appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers (the "Nomination Papers") of William Kested (the "Candidate") as a candidate for nomination to the office of School Board Trustee in the Bureau, Henry, Stark Regional District (the "Office")

to be voted on at the 9th of April, 2013 (the "Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:

4. The Candidate's nomination papers, petition sheets and statement of candidacy do not specify whether the Candidate is seeking to be elected to a full term or to fill an unexpired vacancy in the office of School Board Trustee for the Bureau, Henry, Stark Regional District. By information and belief, at the April 9, 2013 elections, 3 candidates for the office of School Board Trustee of the Bureau, Henry, Stark Regional District will be elected for a full term, and one for an unexpired 4-year vacancy, and one for an unexpired 2-year vacancy.

5. Because the Candidate does not specify whether he is seeking to fill a full term or one of the unexpired vacancies, the Candidate has not properly specified which of the offices he is seeking. Leaving the petitions blank in this regard potentially gives the candidate great advantage as to which term they circle on the form, after signatures are gathered, depending on the gender and geography of others who file for specific seats available.

6. For the reasons specified above the Candidate's nomination papers do not substantially comply with the requirements of the Illinois Election Code and therefore the Candidate's Nomination Papers are invalid.

WHEREFORE, the Objector requests a hearing on the objections stated herein, an examination by the Electoral Board of the official records relating to the matters alleged herein, a ruling that the Nomination Papers are invalid as not lawful and a ruling that the name of the Candidate William Kested shall not appear on the ballot for election to the office of School Board Trustee for the Bureau, Henry, Stark Regional District.

Jon A. Zahm

The Objector Jon A. Zahm

Subscribed and sworn to before me this 3rd day of January, 2013.

Julie N. Hager

Notary Public



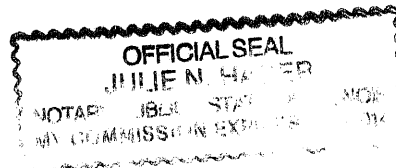
STATE OF ILLINOIS)
) SS.
COUNTY OF HENRY)

The undersigned, Jon A. Zahm., under oath deposes and says that he is the Objector identified in the attached Verified Objector's Petition, and that he has reviewed the allegations contained in said Petition and is familiar with the matters alleged therein and that such allegations are true to the best information available and belief.

Jon A. Zahm
Objector

Subscribed and Sworn to before me
this 3rd. day of January, 2013

Julie N. Hager
NOTARY PUBLIC



STATEMENT OF CANDIDACY

NONPARTISAN

NAME	ADDRESS-ZIP CODE	OFFICE	CITY, VILLAGE OR SPECIAL DISTRICT
WILLIAM KESTED	713 HAWTHORNE CT GENESEO, IL 61254	REGIONAL BOARD OF SCHOOL TRUSTEES	GENESEO

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

STATE OF ILLINOIS

County of HENRY

SS.

I, WILLIAM KESTED being first duly sworn (or affirmed), say that I reside at 713 HAWTHORNE CT in the City Village, Unincorporated Area (circle one) of GENESEO (if unincorporated, list municipality that provides postal service) Zip Code 61254 in the County of HENRY State of Illinois; that I am a qualified voter therein, that I am a candidate for Nomination/Election to the office of REGIONAL BOARD OF SCHOOL TRUSTEES in the BUREAU HENRY STARKE ROE Name of City, Village or Special District to be voted upon at the election to be held on APRIL 9, 2013 (date of election) and that I am legally qualified to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official ballot for Nomination/Election to such office

**RECEIVED BY
MAIL**

William Kested

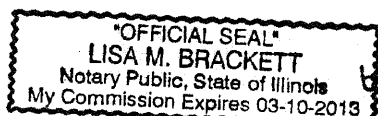
(Signature of Candidate)

Signed and sworn to (or affirmed) by William Kested before me, on 11-15-12
(Name of Candidate) (insert month, day, year)

Lisa M. Brackett

(Notary Public's Signature)

(SEAL)



PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS
DEC 19 8 19 AM '12

This section will be returned to
you when the Statement is filed
with the County Clerk.

(COMPLETE, BUT DO NOT DETACH)

REGIONAL BOARD OF SCHOOL TRUSTEES

Office or Position of Employment for which this statement is filed

(TYPE OR HAND PRINT)

WILLIAM RESTED

Name

713 HAWTHORNE CT

Address

GENESEE IL

City

State

61254

ZIP Code

Receipt is hereby acknowledged
of your Statement of Economic
Interests, filed pursuant to the
Illinois Governmental Ethics Act. The
Statement was filed on this date:

FILED

DEC 14 2012

BARBARA M. LINN
HENRY COUNTY CLERK

BY

LOYALTY OATH
(OPTIONAL)

United States of America)
)
State of Illinois) SS.

I, WILLIAM KESTED, do swear (or affirm) that I am a citizen of the United States and the State of Illinois, that I am not affiliated directly or indirectly with any communist organization or any communist front organization, or any foreign political agency, party, organization or government which advocates the overthrow of constitutional government by force or other means not permitted under the Constitution of the United States or the Constitution of this State; that I do not directly or indirectly teach or advocate the overthrow of the government of the United States or of this State or any unlawful change in the form of the governments thereof by force or any unlawful means.

William Kested
(Signature of Candidate)

Signed and sworn to (or affirmed) by WILLIAM KESTED before me,
(Name of Candidate)
on 11-14-12
(insert month, day, year)

Lisa M Brackett
(Notary Public's Signature)

(SEAL)



**PETITION FOR NOMINATION FOR
MULTI-COUNTY REGIONAL SCHOOL TRUSTEES
TO BE FILED WITH THE STATE BOARD OF ELECTIONS**

We, the undersigned, being 50 or more of the voters qualified to vote, hereby petition that William Kested
who resides at 713 Hawthorne Court in Township (or Road District) Geneseo, in
Henry County, shall be a candidate for the office of **MEMBER OF THE REGIONAL BOARD OF SCHOOL**
TRUSTEES of Bureau Henry Stark Region (Counties within region) full term or vacancy (circle
one) to be voted for at the Consolidated Election to be held April 9, 2013 (date of election).

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

NAME (VOTER'S SIGNATURE)	STREET ADDRESS OR RR NUMBER	CITY, TOWN OR VILLAGE	IL	COUNTY
1. <u>Sharon Sweager</u>	<u>616 W. Hudson</u>	<u>Princeton</u>	<u>IL</u>	<u>Bureau</u>
2. <u>Scott Kuffel</u>	<u>316 W. First St</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>
3. <u>[Signature]</u>	<u>1235 Sheward Glen Dr.</u>	<u>Princeton</u>	<u>IL</u>	<u>Bureau</u>
4. <u>[Signature]</u>	<u>606 WEST COURT ST</u>	<u>Cambridge</u>	<u>IL</u>	<u>Henry</u>
5. <u>Dan [Signature]</u>	<u>525 NW 3rd Ave</u>	<u>Galva</u>	<u>IL</u>	<u>Henry</u>
6. <u>Jerry Kestel</u>	<u>8160 N. Wyoming Rd.</u>	<u>Wyoming</u>	<u>IL</u>	<u>Stark</u>
7. <u>[Signature]</u>	<u>1888 E. 1st St</u>	<u>Galva</u>	<u>IL</u>	<u>Henry</u>
8. <u>[Signature]</u>	<u>713 Hawthorne Ct</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>
9. <u>Laurel Ewert</u>	<u>727 Hawthorne Ct</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>
10. <u>[Signature]</u>	<u>727 Hawthorne Ct</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>
11. <u>[Signature]</u>	<u>714 Hawthorne Ct</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>
12. <u>[Signature]</u>	<u>724 Hawthorne Ct</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>

State of ILLINOIS

SS.

County of HENRY

I, WILLIAM KESTED (Circulator's Name) do hereby certify that I reside at 713 HAWTHORNE CT.
in the City Village/Unincorporated Area (circle one) of GENESEO (if unincorporated, list municipality that provides
postal service) (Zip Code) 61254 County of HENRY State of ILLINOIS that I am 18 years of age
or older, that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence, not more than 90
days preceding the day of filing of the petitions and are genuine and that to the best of my knowledge and belief the persons so
signed were at the time of signing the petition registered voters of the political division in which the candidate is seeking elective
office and that the respective residences are correctly stated, as above set forth.

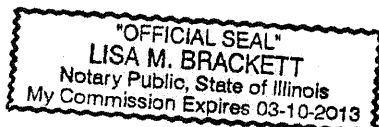
RECEIVED BY

MAIL

Signed and sworn to (affirmed) by WILLIAM KESTED (Name of Circulator)
before me, on 11-14-12 (insert month, day, year)

(SEAL)

SHEET NO. 1



12 DEC 19 AM 8:49
PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS

Harrington, Bernadette

From: Jon Zahm [goliathslayers@gmail.com]
Sent: Monday, January 21, 2013 2:50 PM
To: Herman, David
Cc: jon@thegoliathslayer.com; wksted@yahoo.com; Harrington, Bernadette; Sandvoss, Steve
Subject: Re: Zahm v. Kested, 13 SOEB CE 102

I move for summary judgment on this case to not place the candidate objected to from the ballot as the law and precedent is very clear.

Article 10 of the Election Code governs the making of nominations in non-partisan and independent races. Section 10-4 governs the form of the petitions and Section 10-5 governs the form of the statement of candidacy and the filing of the statement of economic interest. Section 10-4 requires that the nominating petitions heading give "the information as to the name of the candidate or candidates in whose behalf such petition is signed; the office; the party; place of residence; and such other information or wording as required to make same valid..." Section 10-5 requires that the statement of candidacy shall contain "the address of such candidate, shall state that the candidate is qualified for the office specified..."

The question that needs to be addressed is whether the failure of the candidates to state sufficiently the office invalidates their nominating papers. The First District Appellate Court addressed the issue of voter confusion because of the improper designation of the office by the candidate in *Zapolsky v. Cook County Officers Electoral Bd.*, 296 Ill.App.3d 731 (1st Dist. 1998). In that case, the appellate court held that the failure to specify on a nominating petition sheet whether the candidate was seeking a full or partial term invalidates the petitions when there are both full and partial terms of the same office on the ballot in the same election. When both full and partial terms for the same office are on the ballot in the same election, the failure to specify on petitions which term the candidate is seeking fails to strictly or substantially comply with Election Code provisions, and causes a basis for confusion to the voters as to which of the possible offices this candidate is seeking. The court went on to say that where there are numerous vacancies in a district that are up for election, failing to specify the office sought is fatal. The court determined that:

The apparent purpose of the nominating petitions signed by the voters is to expand the informed participation of members of the respective parties in their primary election. Nominating petitions should be free from a "basis for confusion" as to the office for which they are filed. A potential signatory to a nominating petition has the right to know the specific vacancy sought by a candidate so that the signatory may make an informed decision to sign the petition of support another candidate for the same vacancy. *Zapolsky*, at 735.

**Respectfully,
Jon A. Zahm**

On Fri, Jan 18, 2013 at 5:41 PM, Herman, David <dherman@giffinwinning.com> wrote:

Pursuant to the case management conference held today relating to the pending objection to your nomination papers filed by Mr. Zahm, I order the following:

1. This matter involves a legal dispute as to the legal sufficiency of the nominations filed by the Candidate and there is no need to hold an evidentiary hearing in this matter as acknowledged by the parties present during today's pre-hearing conference (in person and by phone). Accordingly, no evidentiary hearing will be held in this matter and the objection will be ruled upon based on the filings of the parties.
2. The deadlines set forth in the Rules of Procedure adopted by the State Board of Elections Sitting as the Duly Constituted State Officers Electoral Board and published on the State Board of Elections website must be strictly adhered to by the parties.
 - a. Candidate's Motion to Strike and/or Dismiss or other similar motion (and memorandum of law) and Objector's Motion for Summary Judgment or similar motion (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal

counsel (all email addresses are in the to and from line of this email) on or before 5:00 p.m. central time on Monday, January 21, 2013.

b. Objector's Response to Candidate's filing (and memorandum of law) and Candidate's Response to Objector's filing (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 5:00 p.m. central time on Tuesday, January 22, 2013.

c. Objector's Reply to Candidate's Response (and memorandum of law) and Candidate's Reply to Objector's Response (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 5:00 p.m. central time on Wednesday, January 22, 2013.

3. The next hearing before the State Officers Electoral Board is set for Wednesday, January 30, 2013 at 3:00 p.m. central time at the State Board of Elections Offices (in Chicago and Springfield). At that time the State Officers Electoral Board will consider the Hearing Officer's Report and Recommendation on the pending objection to your candidacy.

4. The parties Exceptions to the Report of the Hearing Officer, if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 3:00 p.m. central time on Tuesday, January 29, 2013.

5. Attached are the entries of appearances filed by each party at the conference held today.

6. Acknowledge receipt of this email order.

Dated: 1/18/2013

David Herman

David A. Herman

Attorney

Giffin, Winning, Cohen & Bodewes, P.C.

One West Old State Capitol Plaza, Suite 600

Springfield, IL 62701

Phone (217) 525-1571

Harrington, Bernadette

From: Herman, David [dherman@griffinwinning.com]
Sent: Friday, January 18, 2013 5:44 PM
To: Sandvoss, Steve; Harrington, Bernadette
Subject: FW: Response to candidacy objection

For his file

David A. Herman

From: Bill Kested [mailto:wkested@yahoo.com]
Sent: Friday, January 18, 2013 4:29 PM
To: Herman, David
Subject: Fw: Response to candidacy objection

Misspelled original email. Please acknowledge receipt.

From: William Kested <wkested@yahoo.com>;
To: dherman@griffinwinning.com <dherman@griffinwinning.com>;
Cc: jon@thegoliathslayer.com <jon@thegoliathslayer.com>;
Subject: Response to candidacy objection
Sent: Fri, Jan 18, 2013 10:12:33 PM

This is all very difficult to respond to since I am in Florida for the month of January. After reviewing a blank petition form on SBE's website, I now see why I missed designating whether my candidacy was for a full or unexpired term. The flaw is with the form. I have designed numerous forms when I was working. The first rule of form making is that you do not imbed choices in a sentence which then has to be circled or crossed out, etc. You make choices stand out so they are not missed. But that is not the way SBE designed the petition form.

I freely admit that I missed the choices of full term or unexpired term. Should that invalidate an otherwise acceptable petition?

And, for the record, I never received any letter from the SBE. I am in Florida until then end of January and I do not have my mail forwarded. So, truthfully, I do not know if I received any letter. I just know that the regional superintendent emailed me that other candidates received notification of objection.

William B. Kested
Sent from my iPad

Zahm v. Lodico
13 SOEB CE 103

Candidate: James S. Lodico

Office: Regional Board of School Trustee, Bureau/Henry/Stark Counties

Party: N/A

Objector: Jon A. Zahm

Attorney For Objector: Pro Se

Attorney For Candidate: Pro Se

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Candidate's nominating papers fail to specify whether the candidate is seeking to be elected to a full term or to fill an unexpired term resulting from a vacancy in said office. There are three terms up for election: Full term, 4 year unexpired term and 2 year unexpired term.

Dispositive Motions: Objector: Motion for Summary Judgment;

Binder Check Necessary: No

Hearing Officer: David Herman

Hearing Officer Findings and Recommendation: Section 10-4 of the Election Code sets forth requirements of a nominating petition that must be fulfilled in order for a candidate's name to be placed on the ballot. Specifically, 10-4 requires petitions for nomination to include, among other things, the office the candidate seeks. It also imposes a penalty for noncompliance, such that no signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of Section 10-4 are complied with.

Here, by failing to specify whether he is seeking to be elected to a full term or to fill an unexpired term resulting from a vacancy in office, Candidate did not identify the specific office sought in any of his nominating papers. Similar to the candidate in Heabler v. Municipal Electoral Board of the Village of Lakemoor, 338 Ill. App. 3d 1059 (2d Dist. 2003), the failure to specify the term created a basis for confusion as to the office for which Candidate filed his nominating papers. Accordingly, Candidate's nominating papers are invalid.

On this basis, the Hearing Officer recommends that the Board grant the objection to the Candidate's nominating papers based on noncompliance with Section 10-4 of the Election Code and not certify the Candidate's name to the ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATE FOR THE OFFICE OF SCHOOL BOARD
TRUSTEE IN THE BUREAU, HENRY, STARK REGIONAL DISTRICT**

Jon A. Zahm,)	
)	
Petitioner-Objector,)	
)	
v.)	File No. 13 SOEB CE 103
)	
James S. Lodico,)	
)	
Respondent-Candidate.)	

RECOMMENDATION OF HEARING EXAMINER

TO: Jon A. Zahm	James S. Lodico
14910 Osco Road	415 Ridge Drive
Osco, Illinois 61274	Geneseo, Illinois 61254
Tel: (309) 522-5008	Cell: (309) 945-7443
Cell: (630) 946-8683	<u>thestallion@mchsi.com</u>
<u>jon@thegoliathslayer.com</u>	

I. Procedural History

On December 19, 2012, Candidate filed his Statement of Candidacy, Statement of Economic Interests, Loyalty Oath and Nomination Petitions. In his Statement of Candidacy, Candidate listed the office he was seeking as "Multi-County Regional School Trustees" in the Bureau-Henry-Stark Counties. On his nomination petitions, Candidate listed the office he was seeking as "Member of the Regional Board of School Trustees of Bureau Henry Stark Region."

Candidate failed to indicate on any of his nomination papers whether he was running for a full term or vacancy for the Consolidated Election to be held on April 9, 2013.

Objector filed his Verified Objector's Petition on January 3, 2013, alleging that the Candidate's nomination papers were invalid because Candidate did not specify whether he was seeking to fill a full term or one of the unexpired vacancies. Objector alleged that, on information and belief, at the April 9, 2013 election, 3 candidates were to be elected for a full term, one for an unexpired 4-year vacancy, and one for an unexpired 2-year vacancy. Objector asked that Candidate not be allowed to appear on the ballot for election to the office of School Board Trustee for the Bureau, Henry, Stark Regional District.

Objector further filed a Motion for Summary Judgment on January 21, 2013, stating that Candidate's nomination petitions failed to conform to the requirements of section 10-4 of the

Election Code, and that pursuant to Zaplosky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731 (1st Dist. 1998), when a candidate fails to specify whether the candidate sought a full or partial term, the candidate's petitions are invalid.

II. Objection Based on Non-Compliance of Nominating Papers with 10 ILCS 5/10-4.

A. Objector's Argument

In his Petition, Objector asserts that the Candidate's nominating papers fail to specify whether Candidate is seeking to be elected to a full term or to fill an unexpired vacancy, and therefore fail to state the office sought by Candidate, as required by section 10-4 of the Election Code. As a result, Objector asserts that the Candidate's nominating petitions should be stricken in whole and Candidate should not be allowed to appear on the ballot for election.

B. Candidate's Argument

The Candidate makes no response to Objector's Petition or Motion for Summary Judgment.

C. Analysis

"The question of interpreting whether a candidate complied substantially with the Election Code is a question of law." Pascente v. County Officers Electoral Board of the County of Cook, 373 Ill. App. 3d 871, 873 (1st Dist. 2007) citing Salgado v. Marquez, 356 Ill. App. 3d 1072, 1075 (2d Dist. 2005).

Section 10-4 of the Election Code sets forth the requirements of a nominating petition that must be filed prior to a candidate's name being placed on the ballot. *See Wollan v. Jacoby*, 274 Ill. App. 3d 388, 393 (1st Dist. 1995); 10 ILCS 5/10-4. That section requires petitions for nomination to include, among other things, the office the candidate seeks. *See* 10 ILCS 5/10-4. It also imposes a penalty for noncompliance, such that: "no signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with." Wollan, 274 Ill. App. 3d at 393 quoting 10 ILCS 5/10-4.

Section 10-4 applies to persons seeking nomination as independent or nonpartisan candidates in a general election. Wollan, 274 Ill. App. 3d at 395. A similar provision of the Election Code, section 7-10, applies to persons seeking nomination as political party candidates in a primary election. *Id.* The Second District has held, in Salgado v. Marquez, 356 Ill. App. 3d 1072 (2d Dist. 2005), that the analysis and result of question of whether nomination petitions require candidates to set forth "the office" they are seeking is the same under sections 10-4 and 7-10 of the Election Code. *See Salgado*, 356 Ill. App. 3d at 1075-1076.

"A description of the office sought by a candidate is generally sufficient where there is 'no basis for confusion as to the office for which the nominating papers were filed.'" Heabler v. Municipal Electoral Board of the Village of Lakemoor, 338 Ill. App. 3d 1059, 1061 (2d Dist. 2003) quoting Lewis v. Dunne, 63 Ill. 2d 48, 53 (1976). "There is no basis for confusion where, looking at the nominating papers as a whole, it is clear which position the candidate seeks." *Id.*

In Heabler, the candidate filed nomination papers to be a candidate for “trustee” of the Village of Lakemoor. Heabler, 338 Ill. App. 3d at 1060. The candidate’s nominating papers included both a statement of candidacy and petitions for nomination signed by voters. Id. Similar to the facts of this case, in Heabler, there were different types of trustee offices to be filled in the election; one type a full-term vacancy and carrying a term of four years, the other type created by a vacancy and carrying a term of 2 years. Id. In that case, none of the nominating papers filed by the candidate indicated which of the trustee offices he sought, but identified the office only as “trustee.” Id. An incumbent trustee filed an objection to candidate’s nomination papers on the basis that they did not identify which type of trustee position candidate sought. Heabler, 338 Ill. App. 3d at 1060.

There, the Second District found that because none of the candidate’s nominating papers indicated which of the two trustee offices petitioner sought—full term or vacancy—there was a basis for confusion as to the office for which nominating papers were filed, and the nominating papers were invalid. Id. at 1062-1063. In its decision, the Second District distinguished the holding in Lewis v. Dunne, 63 Ill. 2d 48 (1976) (holding that nominating papers were valid because taken *as a whole*, the office sought was clearly identified), and questioned the conclusion reached by the First District in Zaplosky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731 (1998) (holding that the failure to specify the precise office sought on petitions for nomination *per se* renders nominating papers invalid, even where the specific office is identified on other nominating papers).

Here, like the candidate in Heabler, Candidate did not identify the specific office sought in any of his nominating papers. This created a basis for confusion as to the office for which Candidate filed his nominating papers. Accordingly, Candidate’s nominating papers are invalid and Objector’s Petition should be granted.

It should be noted, however, that the dissent in Heabler strongly criticized the majority’s opinion, finding that while section 7-10 of the Election Code requires a candidate to state the office sought, it does not require a candidate to designate the *term* of the office he desires. Heabler, 338 Ill. App. 3d at 1064.

Conclusion

Hearing Examiner recommends that:

1. The Board grant the objection to the Candidate’s nominating papers based on non-compliance with 10 ILCS 5/10-4 and remove the Candidate’s name from the ballot.

DATED: 1/25/13



David A. Herman, Hearing Examiner

CERTIFICATE OF SERVICE

Service of the foregoing document was made by sending a copy via e-mail transmission to the following parties:

Jon A. Zahm
14910 Osco Road
Osco, Illinois 61274
jon@thegoliathslayer.com

James S. Lodico
415 Ridge Drive
Geneseo, Illinois 61254
thestallion@mchsi.com

on this 25th day of January, 2013.

A handwritten signature in black ink, appearing to read 'D. Herman', written over a horizontal line.

David A. Herman, Hearing Examiner



**FRANK HEABLER, JR., Petitioner-Appellant, v. MUNICIPAL OFFICERS
ELECTORAL BOARD OF THE VILLAGE OF LAKEMOOR and its Members
ROBERT KOEHL, DONALD POGGENSEE, and LENORE LUKAS-TUTIEN, in
Their Official Capacities; KATHERINE SCHULTZ, County Clerk of McHenry
County, in Her Official Capacity; LENORE LUKAS-TUTIEN, Village Clerk of
Lakemoor, in Her Official Capacity, Respondents-Appellees.**

No. 2-03-0345

APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

338 Ill. App. 3d 1059; 789 N.E.2d 854; 2003 Ill. App. LEXIS 563; 273 Ill. Dec. 680

May 5, 2003, Decided

SUBSEQUENT HISTORY: [***1] Released for Publication June 6, 2003. As Corrected June 2, 2003.

PRIOR HISTORY: Appeal from the Circuit Court of McHenry County. No. 03--MR--31. Honorable Michael J. Sullivan Judge, Presiding.

DISPOSITION: Affirmed.

COUNSEL: For Frank Heabler, Jr., Appellant: John L. Miller, Woerthwein & Miller, Chicago, IL.

For Robert Koehl, Lenore Lukas-Tutien, Donald Poggensee, Katherine Schultz and Village of Lakemoor, Appellees: Lisa M. Waggoner, The Waggoner Law Firm, P.C., Crystal Lake, IL

JUDGES: JUSTICE O'MALLEY delivered the opinion of the court. KAPALA, J., concurs. JUSTICE GILLERAN JOHNSON, dissenting.

OPINION BY: O'MALLEY

OPINION

[**855] [*1060] JUSTICE O'MALLEY delivered the opinion of the court:

Petitioner, Frank Heabler, Jr., appeals from the March 19, 2003, judgment of the circuit court of McHenry County that affirmed the decision of the Municipal Officers Electoral Board of the Village of Lake-

moor (the Electoral Board) sustaining objections to petitioner's nominating papers filed for the April 1, 2003, Village of Lakemoor (Lakemoor) trustee election. We affirm.

On January 13, 2003, petitioner filed nominating papers to be a candidate for trustee in the April 1, 2003, consolidated election in Lakemoor. The nominating papers included both a statement of candidacy and petitions for nomination that were signed by voters. There were two different types of trustee offices to be filled in the election. The first type was the full-term trustee office and carried a term of four years. The second [***2] type was created by a vacancy and carried a term of two [**856] years. A document distributed to candidates by Lakemoor stated that there were three four-year trustee offices and one two-year office to be filled in the election. The same document admonished the candidates to consult competent legal counsel in filing their petitions for nomination. Despite the two types of trustee offices available, petitioner identified the office he sought only as "trustee" on all of his nominating papers.

Ralph Brindise, an incumbent trustee who was also running in the April 1 election, objected to petitioner's nominating papers on the basis that they did not identify which type of trustee position petitioner sought. On February 3, 2003, the Electoral Board held a hearing on Brindise's objections. At the hearing, petitioner testified that the office he sought was trustee for a four-year term. On February 5, 2003, the Electoral Board sustained Brindise's objections, finding that petitioner had not identified which type of trustee office he was seeking in

338 Ill. App. 3d 1059, *; 789 N.E.2d 854, **;
2003 Ill. App. LEXIS 563, ***; 273 Ill. Dec. 680

any of his nominating papers. As a result of this decision, petitioner's name was removed from the ballot. On March 19, 2003, the circuit court of McHenry [***3] County affirmed the Electoral Board's decision.

This court has granted accelerated review of this case under *Supreme Court Rule 311* (155 Ill. 2d R. 311). We review the decision of the Electoral Board *de novo* because it involves a question of law. *Brennan v. Kolman*, 335 Ill. App. 3d 716, 719, 269 Ill. Dec. 847, 781 N.E.2d 644 (2002).

On appeal, petitioner argues that his description of the office [*1061] sought as "trustee" was sufficient because a general description of an office is presumed to refer to the full-term office unless otherwise specified. We disagree.

A description of the office sought by a candidate is generally sufficient where there is "no basis for confusion as to the office for which the nominating papers were filed." *Lewis v. Dunne*, 63 Ill. 2d 48, 53, 344 N.E.2d 443 (1976). There is no basis for confusion where, looking at the nominating papers as a whole, it is clear which position the candidate seeks. *Lewis*, 63 Ill. 2d at 53.

In *Lewis*, a candidate for appellate judge described the office he sought only as "Judge of the Appellate Court of Illinois, First Judicial District" on his statement of candidacy. [***4] *Lewis*, 63 Ill. 2d at 50. The candidate properly described the office as "Judge of the Appellate Court of Illinois, First Judicial District, to fill the vacancy created by the retirement of the Honorable Robert E. English" on his petitions for nomination. *Lewis*, 63 Ill. 2d at 49-50. The candidate's nominating papers were challenged on the basis that the statement of candidacy did not describe the specific vacancy the candidate sought. *Lewis*, 63 Ill. 2d at 50. The supreme court held that the nominating papers were valid based on two factors. First, there was "no basis for confusion as to the office for which the nominating papers were filed." *Lewis*, 63 Ill. 2d at 53. Taken as a whole, the nominating papers, of which both the statement of candidacy and the petitions for nomination are part, clearly identified the office that the candidate sought because a specific description of the office was included in the petitions for nomination. *Lewis*, 63 Ill. 2d at 53. Second, there was nothing about the statement of candidacy itself that made it necessary for the specific description of the office to be included [***5] therein. The purpose of a statement of candidacy is to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election [**857] for the office he seeks. *Lewis*, 63 Ill. 2d at 53. The general description of the office is the functional equivalent of the specific description for this purpose. *Lewis*, 63 Ill. 2d at 53. Thus, there was no

reason for the statement of candidacy to contain more than a general description of the office where other nominating papers contained the specific description.

Zapolsky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731, 231 Ill. Dec. 210, 695 N.E.2d 1329 (1998), a First District case cited by respondent, held that the failure to specify the precise office sought on petitions for nomination *per se* renders nominating papers invalid even where the specific office is identified on other nominating papers. In *Zapolsky*, there were full-term offices and a vacancy to be filled in the election. *Zapolsky*, 296 Ill. App. 3d at 732. The candidate, however, described the office she sought on her petitions for nomination only as " 'Commissioner of [***6] the [*1062] Metropolitan Water Reclamation District of Greater Chicago.' " *Zapolsky*, 296 Ill. App. 3d at 732. The candidate correctly identified the office in her statement of candidacy and economic statement as " 'Commissioner of the Metropolitan Water Reclamation District of Greater Chicago to fill the vacancy for the unexpired two (2) year term.' " *Zapolsky*, 296 Ill. App. 3d at 732. As in *Lewis*, there was no basis for confusion as to the office for which the nominating papers were filed because the statement of candidacy and economic statement sufficiently delineated that information. The court, however, held that petitions for nomination always must identify the specific vacancy sought because of their distinctive purpose. *Zapolsky*, 296 Ill. App. 3d at 734. According to the court, "[t]he apparent purpose of nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election." *Zapolsky*, 296 Ill. App. 3d at 734. The court concluded that to accomplish this purpose "[a] potential signatory to a nominating petition has the right to know the specific [***7] vacancy sought by the candidate so that the signatory may make an informed decision to sign the petition or support another candidate for the same vacancy." *Zapolsky*, 296 Ill. App. 3d at 734.

The conclusion in *Zapolsky* is questionable. *Zapolsky* premised its holding on its finding that "[t]he apparent purpose of nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election." *Zapolsky*, 296 Ill. App. 3d at 734. *Zapolsky* cited no authority for this finding. Other cases have held, more logically, that the primary purpose of the signature requirement is to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters. *Lockhart v. Cook County Officers Electoral Board*, 328 Ill. App. 3d 838, 844, 262 Ill. Dec. 968, 767 N.E.2d 428 (2002); *Huskey v. Municipal Officers Electoral Board*, 156 Ill.

338 Ill. App. 3d 1059, *; 789 N.E.2d 854, **;
2003 Ill. App. LEXIS 563, ***; 273 Ill. Dec. 680

*App. 3d 201, 206, 108 Ill. Dec. 859, 509 N.E.2d 555 (1987); Merz v. Volberding, 94 Ill. App. 3d 1111, 1118, 50 Ill. Dec. 520, 419 N.E.2d 628 (1981); [***8] Briscoe v. Kusper, 435 F.2d 1046, 1054 (7th Cir. 1970).*

We need not decide whether to adopt the *Zapolsky* holding in the Second District, however. Unlike *Zapolsky* and unlike *Lewis*, here petitioner did not identify which of the two offices he sought on any [***858] of his nominating papers. A candidate's description of the office he seeks may not create "basis for confusion as to the office for which the nominating papers were filed." *Lewis*, 63 Ill. 2d at 53. In *Lewis*, the supreme court held that the failure to specifically identify the office sought in a statement of candidacy was excused where other nominating papers did so. *Lewis*, 63 Ill. 2d at 53. Here none of [***1063] the nominating papers indicate which of the two trustee offices petitioner sought. As a result, it is not clear from the nominating papers which trustee office petitioner intended to run for. This constitutes a basis for confusion as to the office for which the nominating papers were filed.

Petitioner argues that his general description of the office he sought was sufficient because nominating papers are considered filed for the full-term office unless [***9] otherwise specified. According to petitioner, only a candidate seeking to fill an office created by a vacancy need give a specific description of the office he seeks because a vacancy is "an exception to the statutory scheme." Petitioner premises this assertion on the fact that the statute provides for trustees to serve a four-year term. 65 ILCS 5/3.1--25--5 (West 2000). The trouble with this argument is that the statute also provides for trustees to serve less than a four-year term where they fill a vacancy. 65 ILCS 5/3.1--10--50(b) (West 2000). Thus, an office created by a vacancy is not "an exception to the statutory scheme" but, rather, specifically provided for by statute.

Petitioner, in essence, asks us to create a default rule that a general description of an office sought is presumed to refer to the full-term office unless otherwise specified. We have found no authority that supports such a rule. Under *Lewis*, a candidate must make clear the office that he seeks somewhere in his nominating papers. We do not find this rule unduly burdensome such that we need qualify it today. Accordingly, petitioner's nominating papers [***10] are invalid because he failed to specify which of the two trustee positions he sought.

Petitioner additionally argues that the Electoral Board was estopped to remove his name from the ballot because Lakemoor published a document listing available offices that classified both the two-year and the four-year trustee offices as "trustee." Before an estoppel against a public body can be found, it must be shown that

an affirmative act occurred on the part of the governmental body that induced substantial reliance by the litigant. *Schumann v. Kumarich*, 102 Ill. App. 3d 454, 460, 58 Ill. Dec. 157, 430 N.E.2d 99 (1981). Petitioner does not even argue that he relied on the document in failing to specify which of the two trustee positions he sought. Nor can he. The same document made clear that there were two types of trustee offices available and even admonished petitioner to consult competent legal counsel in filing his petitions for nomination. The Electoral Board was not estopped to remove petitioner's name from the ballot.

[***1064] The judgment of the circuit court of McHenry County is affirmed.

Affirmed.

KAPALA, J., concurs.

DISSENT BY: GILLERAN JOHNSON

DISSENT

JUSTICE GILLERAN JOHNSON, [***11] dissenting:

I respectfully dissent. I believe that the petitioner complied with section 7--10 of the Election Code (10 ILCS 5/7--10 (West 2000)), which requires that a candidate's nominating papers state the office that the candidate seeks.

[***859] Specifically, section 7--10 of the Election Code provides that the statement of candidacy must state the candidate's name, his political party, his place of residency, and the office he seeks. 10 ILCS 5/7--10 (West 2000). The statement of candidacy must also be notarized. 10 ILCS 5/7--10 (West 2000). Additionally, section 7--10 of the Election Code provides that a candidate's petitions for nomination be uniform in size, contain a certain number of signatures, and be fastened together in book form. 10 ILCS 5/7--10 (West 2000). Each nominating petition must state the candidate's name, his address, and the office he seeks. 10 ILCS 5/7--10 (West 2000).

In accordance with section 7--10 of the Election Code, the petitioner stated, in both his nominating petition and statement of candidacy, that he sought the office of "trustee." [***12] " That the petitioner did not designate whether he desired a four-year or two-year term did not render his description of the office insufficient. As noted above, section 7--10 of the Election Code sets out the precise form of a candidate's nominating papers. However, nowhere in section 7--10 of the Election Code does it require a candidate to designate the term of the office he desires. See 10 ILCS 5/7--10 (West 2000).

338 Ill. App. 3d 1059, *; 789 N.E.2d 854, **;
2003 Ill. App. LEXIS 563, ***; 273 Ill. Dec. 680

The majority's imposition of such a requirement on a candidate that he state the length of term he desires is, in the present case, superfluous, as the term of office of a trustee is defined by statute. Particularly, the Illinois Municipal Code (65 ILCS 5/3.1--25--5 (West 2000)) (the Municipal Code) provides: "In each village incorporated under this Code, the electors of the village shall elect 6 trustees. The term of office of the trustees shall be 4 years ***."

Although the Municipal Code also provides for trustees to serve less than four years in instances where they fill a vacancy (65 ILCS 5/3.1--10--50 (West 2000)), this does not contravene the general rule that a trustee is an elected [***13] four-year position. The majority's position that there was a basis for confusion herein is therefore flawed. It was obvious that the petitioner was not seeking to fill a vacancy. The [*1065] petitioner's nominating petition and statement of candidacy clearly indicated that the petitioner was seeking the position of trustee, which by statute is defined with a four-year term. Accordingly, the majority's suggestion that there was confusion over how long a term of office the petitioner was seeking is unfounded.

Even if section 7--10 of the Election Code did require the petitioner to state the length of the term he sought, such an omission was inconsequential, and the Electoral Board should have found that the petitioner substantially complied. It is a fundamental principle that access to a place on the ballot is a substantial right and not lightly to be denied. *Nolan v. Cook County Officers Electoral Board*, 329 Ill. App. 3d 52, 55, 263 Ill. Dec. 456, 768 N.E.2d 216 (2002). The petitioner's failure to describe the position he sought more precisely was, at maximum, a minor error. A minor error in a candidate's nominating papers should not result in a candidate's removal from the [***14] ballot. *Sullivan v. County Officers Electoral Board*, 225 Ill. App. 3d 691, 693, 167 Ill. Dec. 834, 588 N.E.2d 475 (1992).

I am mindful that compliance with section 7--10 of the Election Code has been held to be mandatory and not directory. See *Bowe v. Chicago Electoral Board*, 79 Ill. 2d 469, 470, 38 Ill. Dec. 756, 404 N.E.2d 180 (1980). However, substantial compliance has been held, in some circumstances, to satisfy even certain mandatory requirements of the Election Code, including section 7--10. See *Courtney v. County Officers Electoral Board*, 314 Ill. App. 3d 870, 876, [**860] 247 Ill. Dec. 861, 732 N.E.2d 1193 (2000) (finding that the candidate had substantially complied with section 7--10 of the Election Code even though he failed to simultaneously file his nominating petitions with his statement of candidacy); *Panarese v. Hosty*, 104 Ill. App. 3d 627, 628-29, 60 Ill.

Dec. 434, 432 N.E.2d 1333 (1982) (finding that the candidate substantially complied with section 7--10 of the Election Code even though he omitted his street and number from his nominating petition); *Madden v. Schumann*, 105 Ill. App. 3d 900, 903, 61 Ill. Dec. 684, 435 N.E.2d 173 (1982) [***15] (holding that the candidate's omission of the phrase "is a registered voter" from the circulator's oath, as required by section 7--10 of the Election Code, was a technical deviation that did not warrant removal from the ballot); *Stevenson v. County Officers Electoral Board*, 58 Ill. App. 3d 24, 26, 15 Ill. Dec. 571, 373 N.E.2d 1043 (1978) (finding that the candidate's failure to number his nominating petitions consecutively, as required by section 7--10 of the Election Code, was a mere technical deficiency that did not render his nominating papers invalid).

Even *Lewis*, upon which the majority hangs its hat, establishes that a candidate can satisfy section 7--10 of the Election Code with substantial compliance. The *Lewis* court specifically held that the candidate "substantially complied" with section 7--10 of the Election Code even though he failed to describe the particular vacancy that he was seeking in his statement of candidacy. *Lewis*, 63 Ill. 2d at 53. [*1066] Although the *Lewis* court predicated its finding of substantial compliance on the fact that the candidate's nominating papers as a whole did describe the particular vacancy that the candidate [***16] was seeking, describing a particular vacancy in this case was not necessary because, as noted above, the petitioner was not seeking a vacancy. What was required, rather, was that the petitioner state the office he was seeking. This, I believe, the petitioner did.

On a final note, the provisions of the Electoral Code are designed to protect the integrity of the electoral process. *Welch v. Johnson*, 147 Ill. 2d 40, 56, 167 Ill. Dec. 989, 588 N.E.2d 1119 (1992). Furthermore, villages such as Lakemoor have a legitimate interest in regulating the number of candidates on the ballot. Yet, when access to the ballot is involved, the restriction on that access should require the least drastic measure to achieve these ends. In this case, removing the petitioner from the ballot was a drastic measure that did little to protect the integrity of the electoral process. Moreover, the Village of Lakemoor's interests in this case were far outweighed by the petitioner's right to access on the ballot and the voters' right to elect a candidate of their choice. Frank Heabler should have been listed on the ballot for the April 1, 2003, election as a candidate for trustee.

For the above [***17] reasons, I believe the Electoral Board's removal of the petitioner from the ballot was erroneous.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR THE OFFICE OF
SCHOOL BOARD TRUSTEE IN THE BUREAU, HENRY, STARK REGIONAL DISTRICT**

JON A. ZAHM,

Petitioner-Objector,

v.

JAMES S. LODICO,

Respondent-Candidate.

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS
13 JAN -3 PM 4:13

VERIFIED OBJECTOR'S PETITION

INTRODUCTION

Now comes Jon A. Zahm (the "Objector"), and he states as follows:

1. The Objector resides at 14910 Osco Road, Osco, in Henry County, Osco Township Illinois, 61274, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this petition ("Petition") is that of a voter who desires that the laws governing the filing of nomination papers for the Office of School Board Trustee in the Bureau, Henry, Stark Regional District are properly complied with and that only qualified candidates, appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers (the "Nomination Papers") of James S. Lodico (the "Candidate") as a candidate for nomination to the office of School Board Trustee in the Bureau, Henry, Stark Regional District (the

“Office”) to be voted on at the 9th of April, 2013 (the “Election”). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:

4. The Candidate’s nomination papers, petition sheets and statement of candidacy do not specify whether the Candidate is seeking to be elected to a full term or to fill an unexpired vacancy in the office of School Board Trustee for the Bureau, Henry, Stark Regional District. By information and belief, at the April 9, 2013 elections, 3 candidates for the office of School Board Trustee of the Bureau, Henry, Stark Regional District will be elected for a full term, and one for an unexpired 4-year vacancy, and one for an unexpired 2-year vacancy.

5. Because the Candidate does not specify whether he is seeking to fill a full term or one of the unexpired vacancies, the Candidate has not properly specified which of the offices he is seeking. Leaving the petitions blank in this regard potentially gives the candidate great advantage as to which term they circle on the form, after signatures are gathered, depending on the gender and geography of others who file for specific seats available.

6. For the reasons specified above the Candidate’s nomination papers do not substantially comply with the requirements of the Illinois Election Code and therefore the Candidate’s Nomination Papers are invalid.

WHEREFORE, the Objector requests a hearing on the objections stated herein, an examination by the Electoral Board of the official records relating to the matters alleged herein, a ruling that the Nomination Papers are invalid as not lawful and a ruling that the name of the Candidate James S. Lodico shall not appear on the ballot for election to the office of School Board Trustee for the Bureau, Henry, Stark Regional District.

-----*Jon A. Zahm*-----

The Objector Jon A. Zahm

Subscribed and sworn to before me this 3rd day of January, 2013.

*Julie N. Hager*_____

Notary Public



STATE OF ILLINOIS)
) SS.
COUNTY OF HENRY)

The undersigned, Jon A. Zahm., under oath deposes and says that he is the Objector identified in the attached Verified Objector's Petition, and that he has reviewed the allegations contained in said Petition and is familiar with the matters alleged therein and that such allegations are true to the best information available and belief.

Jon A. Zahm
Objector

Subscribed and Sworn to before me
this 3rd. day of January, 2013

Julie N. Hager
NOTARY PUBLIC



STATEMENT OF CANDIDACY

NONPARTISAN

NAME	ADDRESS-ZIP CODE	OFFICE	CITY, VILLAGE OR SPECIAL DISTRICT
JAMES S. LODICO	415- Ridge Drive Geneseo, IL 61254	MULTI-COUNTY Regional School Trustees	

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS James S. Lodico UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

STATE OF ILLINOIS)

County of HENRY) SS.

I, James S. Lodico being first duly sworn (or affirmed), say that I reside at 415-Ridge Drive in the (City) Village, Unincorporated Area (circle one) of Geneseo (if unincorporated, list municipality that provides postal service) Zip Code 61254, in the County of HENRY, State of Illinois; that I am a qualified voter therein, that I am a candidate for Nomination/Election to the office of Multi-County Regional School Trustees in the Bureau Henry Stark Name of City, Village or Special District to be voted upon at the election to be held on April 9, 2013 (date of election) and that I am legally qualified to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official ballot for Nomination/Election to such office.

**RECEIVED BY
MAIL**

Signed and sworn to (or affirmed) by James Lodico before me, on 11-13-12
(Name of Candidate) (insert month, day, year)

(Signature of Candidate)

(SEAL)



(Notary Public's Signature)

STATE BOARD OF ELECTIONS
PRINCIPAL OFFICE
12 DEC 19 AM 8:50

Receipt is hereby acknowledged of your Statement of Economic Interests, filed pursuant to the Illinois Governmental Ethics Act. The Statement was filed on this date:

(COMPLETE BUT DO NOT DETACH)

Regional Board of School Trustees

Office or Position of Employment for which this statement is filed

(TYPE OR HAND PRINT)

James S. Lodico

Name

415-Ridge Drive

Address

Geneeseo

City

IL.

State

61254

ZIP Code

FILED

DEC 14 2012

BARBARA M. LINDSEY
HENRY COUNTY CLERK

BY

____ ATTACH TO PETITION ____

10 ILCS 5/7-10.1

Suggested
Revised July, 2004
SBE No. P-1C

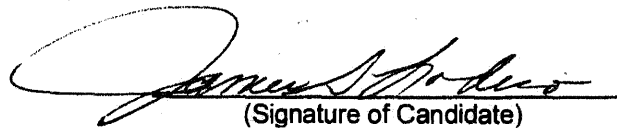
LOYALTY OATH
(OPTIONAL)

United States of America

State of Illinois

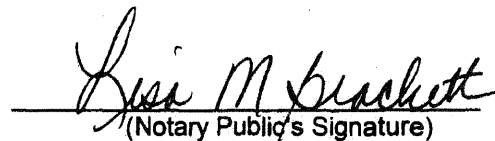
)
) SS.
)

I, James S. Lodico, do swear (or affirm) that I am a citizen of the United States and the State of Illinois, that I am not affiliated directly or indirectly with any communist organization or any communist front organization, or any foreign political agency, party, organization or government which advocates the overthrow of constitutional government by force or other means not permitted under the Constitution of the United States or the Constitution of this State; that I do not directly or indirectly teach or advocate the overthrow of the government of the United States or of this State or any unlawful change in the form of the governments thereof by force or any unlawful means.


(Signature of Candidate)

Signed and sworn to (or affirmed) by James Lodico before me,
(Name of Candidate)

on 11-13-12
(insert month, day, year)


(Notary Public's Signature)

(SEAL)



**PETITION FOR NOMINATION FOR
MULTI-COUNTY REGIONAL SCHOOL TRUSTEES
TO BE FILED WITH THE STATE BOARD OF ELECTIONS**

We, the undersigned, being 50 or more of the voters qualified to vote, hereby petition that James S. Lodico
who resides at 415 Ridge Drive, Geneseo in Township (or Road District) Hanna in
Henry County, shall be a candidate for the office of **MEMBER OF THE REGIONAL BOARD OF SCHOOL**
TRUSTEES of Bureau Henry Stark Region (Counties within region) full term or vacancy (circle
one) to be voted for at the Consolidated Election to be held April 9, 2013 (date of election).

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

NAME (VOTER'S SIGNATURE)	STREET ADDRESS OR RR NUMBER	CITY, TOWN OR VILLAGE	COUNTY
1 <u>William W. Jones</u>	<u>332 E South St.</u>	<u>Shaffield</u>	<u>Bureau</u>
2 <u>John Meyer</u>	<u>1 Ridge Rd</u>	<u>Kewanee</u>	<u>Henry</u>
3 <u>Lawrence D. Luch</u>	<u>123 E Cook</u>	<u>Shaffield</u>	<u>Bureau</u>
4 <u>Alon Dolysky</u>	<u>421 Margaret St</u>	<u>Atkinson</u>	<u>Henry</u>
5 <u>[Signature]</u>	<u>215 Causemaker</u>	<u>Atkinson</u>	<u>Henry</u>
6 <u>Robert M. Van Vorst</u>	<u>215 Causemaker</u>	<u>Atkinson</u>	<u>Henry</u>
7 <u>Debbie Motley</u>	<u>304 Smith St</u>	<u>Nepansit</u>	<u>Bureau</u>
8 <u>[Signature]</u>	<u>325 S. Henry</u>	<u>Geneseo</u>	<u>Henry</u>
9 <u>[Signature]</u>	<u>1533 Crimson King Ct.</u>	<u>Geneseo</u>	<u>Henry</u>
10 <u>John J. Kemmis</u>	<u>28236 Ridge Rd</u>	<u>Prophetstown</u>	<u>Henry</u>
11 <u>Charles J. Kemmis</u>	<u>28236 Ridge Rd</u>	<u>Prophetstown</u>	<u>Henry</u>
12 <u>[Signature]</u>	<u>1122 Timothy Ct.</u>	<u>Geneseo</u>	<u>Henry</u>

State of Illinois

County of Henry

SS.

I, James S. Lodico (Circulator's Name) do hereby certify that I reside at 415 Ridge Drive
in the City/Village/Unincorporated Area (circle one) of Geneseo (if unincorporated, list municipality that provides

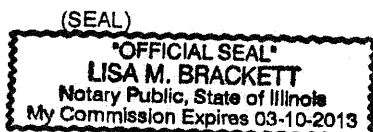
postal service) in the County of Henry State of Illinois that I am 18 years of age
or older, that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence, not more than 90
days preceding the date of filing of the petitions and are genuine and that to the best of my knowledge and belief the persons so
signing were at the time of signing the petition registered voters of the political division in which the candidate is seeking elective
office, and that their respective names are correctly stated, as above set forth.

**RECEIVED BY
MAIL**

Signed and sworn to (or affirmed) by James Lodico (Circulator's Signature) before me, on 11-13-12
(Name of Circulator) (insert month, day, year)

Lisa M. Brackett
(Notary Public's Signature)

SHEET NO. 1



12 DEC 19 AM 8:50
PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS

Harrington, Bernadette

From: Jon Zahm [goliathslayers@gmail.com]
Sent: Monday, January 21, 2013 2:52 PM
To: Herman, David
Cc: jon@thegoliathslayer.com; thestallion@mchsi.com; Harrington, Bernadette; Sandvoss, Steve
Subject: Re: Zahm v. Lodico, 13 SOEB CE 103

I move for summary judgment on this case to not place the candidate objected to on the ballot as the law and precedent is very clear.

Article 10 of the Election Code governs the making of nominations in non-partisan and independent races. Section 10-4 governs the form of the petitions and Section 10-5 governs the form of the statement of candidacy and the filing of the statement of economic interest. Section 10-4 requires that the nominating petitions heading give "the information as to the name of the candidate or candidates in whose behalf such petition is signed; the office; the party; place of residence; and such other information or wording as required to make same valid..." Section 10-5 requires that the statement of candidacy shall contain "the address of such candidate, shall state that the candidate is qualified for the office specified..."

The question that needs to be addressed is whether the failure of the candidates to state sufficiently the office invalidates their nominating papers. The First District Appellate Court addressed the issue of voter confusion because of the improper designation of the office by the candidate in *Zapolsky v. Cook County Officers Electoral Bd.*, 296 Ill.App.3d 731 (1st Dist. 1998). In that case, the appellate court held that the failure to specify on a nominating petition sheet whether the candidate was seeking a full or partial term invalidates the petitions when there are both full and partial terms of the same office on the ballot in the same election. When both full and partial terms for the same office are on the ballot in the same election, the failure to specify on petitions which term the candidate is seeking fails to strictly or substantially comply with Election Code provisions, and causes a basis for confusion to the voters as to which of the possible offices this candidate is seeking. The court went on to say that where there are numerous vacancies in a district that are up for election, failing to specify the office sought is fatal. The court determined that:

The apparent purpose of the nominating petitions signed by the voters is to expand the informed participation of members of the respective parties in their primary election. Nominating petitions should be free from a "basis for confusion" as to the office for which they are filed. A potential signatory to a nominating petition has the right to know the specific vacancy sought by a candidate so that the signatory may make an informed decision to sign the petition of support another candidate for the same vacancy. *Zapolsky*, at 735.

**Respectfully,
Jon A. Zahm**

On Fri, Jan 18, 2013 at 5:40 PM, Herman, David <dherman@giffinwinning.com> wrote:

Pursuant to the case management conference held today relating to the pending objection to your nomination papers filed by Mr. Zahm, I order the following:

1. This matter involves a legal dispute as to the legal sufficiency of the nominations filed by the Candidate and there is no need to hold an evidentiary hearing in this matter as acknowledged by the parties present during today's pre-hearing conference (in person and by phone). Accordingly, no evidentiary hearing will be held in this matter and the objection will be ruled upon based on the filings of the parties.
2. The deadlines set forth in the Rules of Procedure adopted by the State Board of Elections Sitting as the Duly Constituted State Officers Electoral Board and published on the State Board of Elections website must be strictly adhered to by the parties.
 - a. Candidate's Motion to Strike and/or Dismiss or other similar motion (and memorandum of law) and Objector's Motion for Summary Judgment or similar motion (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal

counsel (all email addresses are in the to and from line of this email) on or before 5:00 p.m. central time on Monday, January 21, 2013.

b. Objector's Response to Candidate's filing (and memorandum of law) and Candidate's Response to Objector's filing (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 5:00 p.m. central time on Tuesday, January 22, 2013.

c. Objector's Reply to Candidate's Response (and memorandum of law) and Candidate's Reply to Objector's Response (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 5:00 p.m. central time on Wednesday, January 22, 2013.

3. The next hearing before the State Officers Electoral Board is set for Wednesday, January 30, 2013 at 3:00 p.m. central time at the State Board of Elections Offices (in Chicago and Springfield). At that time the State Officers Electoral Board will consider the Hearing Officer's Report and Recommendation on the pending objection to your candidacy.

4. The parties Exceptions to the Report of the Hearing Officer, if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 3:00 p.m. central time on Tuesday, January 29, 2013.

5. Attached are the entries of appearances filed by each party at the conference held today.

6. Acknowledge receipt of this email order.

Dated: 1/18/2013

David Herman

David A. Herman
Attorney
Giffin, Winning, Cohen & Bodewes, P.C.
One West Old State Capitol Plaza, Suite 600
Springfield, IL 62701

Phone (217) 525-1571

Zahm v. Dalton
13 SOEB CE 104

Candidate: Debra Dalton

Office: Regional Board of School Trustee, Bureau/Henry/Stark Counties

Party: N/A

Objector: Jon A. Zahm

Attorney For Objector: Pro Se

Attorney For Candidate: Pro Se

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Candidate's nominating papers fail to specify whether the candidate is seeking to be elected to a full term or to fill an unexpired term resulting from a vacancy in said office. There are three terms up for election: Full term, 4 year unexpired term and 2 year unexpired term.

Dispositive Motions: Objector: Motion for Summary Judgment; Response to Candidate Dalton's Response

Binder Check Necessary: No

Hearing Officer: David Herman

Hearing Officer Findings and Recommendation: Section 10-4 of the Election Code sets forth requirements of a nominating petition that must be fulfilled in order for a candidate's name to be placed on the ballot. Specifically, 10-4 requires petitions for nomination to include, among other things, the office the candidate seeks. It also imposes a penalty for noncompliance, such that no signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of Section 10-4 are complied with.

Here, by failing to specify whether she is seeking to be elected to a full term or to fill an unexpired term resulting from a vacancy in office, Candidate did not identify the specific office sought in any of her nominating papers. Similar to the candidate in Heabler v. Municipal Electoral Board of the Village of Lakemoor, 338 Ill. App. 3d 1059 (2d Dist. 2003), the failure to specify the term created a basis for confusion as to the office for which Candidate filed her nominating papers. Accordingly, Candidate's nominating papers are invalid.

On this basis, the Hearing Officer recommends that the Board grant the objection to the Candidate's nominating papers based on noncompliance with Section 10-4 of the Election Code and not certify the Candidate's name to the ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATE FOR THE OFFICE OF SCHOOL BOARD
TRUSTEE IN THE BUREAU, HENRY, STARK REGIONAL DISTRICT**

Jon A. Zahm,)	
)	
Petitioner-Objector,)	
)	
v.)	File No. 13 SOEB CE 104
)	
Debra Dalton,)	
)	
Respondent-Candidate.)	

RECOMMENDATION OF HEARING EXAMINER

TO: Jon A. Zahm	Debra Dalton
14910 Osco Road	26506 Angling Rd.
Osco, Illinois 61274	Malden, IL 61337
Tel: (309) 522-5008	Cell: (815)878-2183
Cell: (630) 946-8683	<u>ddalton@hihart.net</u>
<u>jon@thegoliathslayer.com</u>	

I. Procedural History

On December 19, 2012, Candidate filed her Statement of Candidacy, Statement of Economic Interests, Loyalty Oath and Nomination Petitions. In her Statement of Candidacy, Candidate listed the office she was seeking as "Regional Board of School Trustees." On her nomination petitions, Candidate listed the office she was seeking as "Member of the Regional Board of School Trustees of Bureau Henry Stark Region."

Candidate failed to indicate on any of her nomination papers whether she was running for a full term or vacancy for the Consolidated Election to be held on April 9, 2013.

Objector filed his Verified Objector's Petition on January 3, 2013, alleging that the Candidate's nomination papers were invalid because Candidate did not specify whether she was seeking to fill a full term or one of the unexpired vacancies. Objector alleged that, on information and belief, at the April 9, 2013 election, 3 candidates were to be elected for a full term, one for an unexpired 4-year vacancy, and one for an unexpired 2-year vacancy. Objector asked that Candidate not be allowed to appear on the ballot for election to the office of School Board Trustee for the Bureau, Henry, Stark Regional District.

Objector further filed a Motion for Summary Judgment on January 21, 2013, stating that Candidate's nomination petitions failed to conform to the requirements of section 10-4 of the Election Code, and that pursuant to Zaplosky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731 (1st Dist. 1998), when a candidate fails to specify whether the candidate sought a full or partial term, the candidate's petitions are invalid.

Candidate filed a response to Objector's Petition on January 21, 2013, stating that she orally explained to all persons signing her nomination petitions that she was seeking to fill a vacancy on the Regional Board of School Trustees. Candidate further stated that she believed that if she and the other candidates were not allowed on the ballot, it would "subvert the will of the people by not giving them any choice of candidate during the election."

On January 22, 2013, Objector filed a reply to Candidate's response, citing the case of Jackson v. Oglivie for the premise that specific and detailed compliance with the Election Code is required.

II. Objection Based on Non-Compliance of Nominating Papers with 10 ILCS 5/10-4.

A. Objector's Argument

In his Petition, Objector asserts that the Candidate's nominating papers fail to specify whether Candidate is seeking to be elected to a full term or to fill an unexpired vacancy, and therefore fail to state the office sought by Candidate, as required by section 10-4 of the Election Code. As a result, Objector asserts that the Candidate's nominating petitions should be stricken in whole, and Candidate should not be allowed to appear on the ballot for election.

B. Candidate's Argument

The Candidate argues that she substantially complied with the Election Code by giving oral notice of the office sought to each voter signing her nomination petitions. The Candidate further argued that it is in voters' best interest to have a choice of candidate.

C. Analysis

"The question of interpreting whether a candidate complied substantially with the Election Code is a question of law." Pascente v. County Officers Electoral Board of the County of Cook, 373 Ill. App. 3d 871, 873 (1st Dist. 2007) citing Salgado v. Marquez, 356 Ill. App. 3d 1072, 1075 (2d Dist. 2005).

Section 10-4 of the Election Code sets forth the requirements of a nominating petition that must be filed prior to a candidate's name being placed on the ballot. See Wollan v. Jacoby, 274 Ill. App. 3d 388, 393 (1st Dist. 1995); 10 ILCS 5/10-4. That section requires petitions for nomination to include, among other things, the office the candidate seeks. See 10 ILCS 5/10-4. It also imposes a penalty for noncompliance, such that: "no signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with." Wollan, 274 Ill. App. 3d at 393 quoting 10 ILCS 5/10-4.

Section 10-4 applies to persons seeking nomination as independent or nonpartisan candidates in a general election. Wollan, 274 Ill. App. 3d at 395. A similar provision of the Election Code, section 7-10, applies to persons seeking nomination as political party candidates in a primary election. Id. The Second District has held, in Salgado v. Marquez, 356 Ill. App. 3d 1072 (2d Dist. 2005), that the analysis and result of question of whether nomination petitions require candidates to set forth "the office" they are seeking is the same under sections 10-4 and 7-10 of the Election Code. See Salgado, 356 Ill. App. 3d at 1075-1076.

“A description of the office sought by a candidate is generally sufficient where there is ‘no basis for confusion as to the office for which the nominating papers were filed.’” Heabler v. Municipal Electoral Board of the Village of Lakemoor, 338 Ill. App. 3d 1059, 1061 (2d Dist. 2003) quoting Lewis v. Dunne, 63 Ill. 2d 48, 53 (1976). “There is no basis for confusion where, looking at the nominating papers as a whole, it is clear which position the candidate seeks.” Id.

In Heabler, the candidate filed nomination papers to be a candidate for “trustee” of the Village of Lakemoor. Heabler, 338 Ill. App. 3d at 1060. The candidate’s nominating papers included both a statement of candidacy and petitions for nomination signed by voters. Id. Similar to the facts of this case, in Heabler, there were different types of trustee offices to be filled in the election; one type a full-term vacancy and carrying a term of four years, the other type created by a vacancy and carrying a term of 2 years. Id. In that case, none of the nominating papers filed by the candidate indicated which of the trustee offices he sought, but identified the office only as “trustee.” Id. An incumbent trustee filed an objection to candidate’s nomination papers on the basis that they did not identify which type of trustee position candidate sought. Heabler, 338 Ill. App. 3d at 1060.

There, the Second District found that because none of the candidate’s nominating papers indicated which of the two trustee offices petitioner sought—full term or vacancy—there was a basis for confusion as to the office for which nominating papers were filed, and the nominating papers were invalid. Id. at 1062-1063. In its decision, the Second District distinguished the holding in Lewis v. Dunne, 63 Ill. 2d 48 (1976) (holding that nominating papers were valid because taken *as a whole*, the office sought was clearly identified), and questioned the conclusion reached by the First District in Zaplosky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731 (1998) (holding that the failure to specify the precise office sought on petitions for nomination *per se* renders nominating papers invalid, even where the specific office is identified on other nominating papers).

Here, like the candidate in Heabler, Candidate did not identify the specific office sought in any of her nominating papers. This created a basis for confusion as to the office for which Candidate filed her nominating papers. Accordingly, Candidate’s nominating papers are invalid and Objector’s Petition should be granted.

It should be noted, however, that the dissent in Heabler strongly criticized the majority’s opinion, finding that while section 7-10 of the Election Code requires a candidate to state the office sought, it does not require a candidate to designate the *term* of the office he desires. Heabler, 338 Ill. App. 3d at 1064.

Conclusion

Hearing Examiner recommends that:

1. The Board grant the objection to the Candidate’s nominating papers based on non-compliance with 10 ILCS 5/10-4 and remove the Candidate’s name from the ballot.

DATED: 1/25/13



David A. Herman, Hearing Examiner

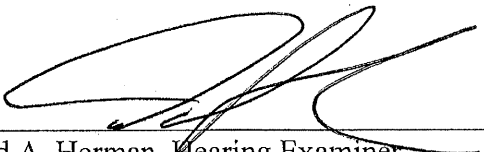
CERTIFICATE OF SERVICE

Service of the foregoing document was made by sending a copy via e-mail transmission to the following parties:

Jon A. Zahm
14910 Osco Road
Osco, Illinois 61274
jon@thegoliathslayer.com

Debra Dalton
26506 Angling Rd.
Malden, IL 61337
ddalton@hihart.net

on this 25th day of January, 2013.



David A. Herman, Hearing Examiner



**FRANK HEABLER, JR., Petitioner-Appellant, v. MUNICIPAL OFFICERS
ELECTORAL BOARD OF THE VILLAGE OF LAKEMOOR and its Members
ROBERT KOEHL, DONALD POGGENSEE, and LENORE LUKAS-TUTIEN, in
Their Official Capacities; KATHERINE SCHULTZ, County Clerk of McHenry
County, in Her Official Capacity; LENORE LUKAS-TUTIEN, Village Clerk of
Lakemoor, in Her Official Capacity, Respondents-Appellees.**

No. 2-03-0345

APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

338 Ill. App. 3d 1059; 789 N.E.2d 854; 2003 Ill. App. LEXIS 563; 273 Ill. Dec. 680

May 5, 2003, Decided

SUBSEQUENT HISTORY: [***1] Released for Publication June 6, 2003. As Corrected June 2, 2003.

PRIOR HISTORY: Appeal from the Circuit Court of McHenry County. No. 03--MR--31. Honorable Michael J. Sullivan Judge, Presiding.

DISPOSITION: Affirmed.

COUNSEL: For Frank Heabler, Jr., Appellant: John L. Miller, Woerthwein & Miller, Chicago, IL.

For Robert Koehl, Lenore Lukas-Tutien, Donald Poggensee, Katherine Schultz and Village of Lakemoor, Appellees: Lisa M. Waggoner, The Waggoner Law Firm, P.C., Crystal Lake, IL

JUDGES: JUSTICE O'MALLEY delivered the opinion of the court. KAPALA, J., concurs. JUSTICE GILLERAN JOHNSON, dissenting.

OPINION BY: O'MALLEY

OPINION

[**855] [**1060] JUSTICE O'MALLEY delivered the opinion of the court:

Petitioner, Frank Heabler, Jr., appeals from the March 19, 2003, judgment of the circuit court of McHenry County that affirmed the decision of the Municipal Officers Electoral Board of the Village of Lake-

moor (the Electoral Board) sustaining objections to petitioner's nominating papers filed for the April 1, 2003, Village of Lakemoor (Lakemoor) trustee election. We affirm.

On January 13, 2003, petitioner filed nominating papers to be a candidate for trustee in the April 1, 2003, consolidated election in Lakemoor. The nominating papers included both a statement of candidacy and petitions for nomination that were signed by voters. There were two different types of trustee offices to be filled in the election. The first type was the full-term trustee office and carried a term of four years. The second [***2] type was created by a vacancy and carried a term of two [**856] years. A document distributed to candidates by Lakemoor stated that there were three four-year trustee offices and one two-year office to be filled in the election. The same document admonished the candidates to consult competent legal counsel in filing their petitions for nomination. Despite the two types of trustee offices available, petitioner identified the office he sought only as "trustee" on all of his nominating papers.

Ralph Brindise, an incumbent trustee who was also running in the April 1 election, objected to petitioner's nominating papers on the basis that they did not identify which type of trustee position petitioner sought. On February 3, 2003, the Electoral Board held a hearing on Brindise's objections. At the hearing, petitioner testified that the office he sought was trustee for a four-year term. On February 5, 2003, the Electoral Board sustained Brindise's objections, finding that petitioner had not identified which type of trustee office he was seeking in

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any of his nominating papers. As a result of this decision, petitioner's name was removed from the ballot. On March 19, 2003, the circuit court of McHenry [***3] County affirmed the Electoral Board's decision.

This court has granted accelerated review of this case under *Supreme Court Rule 311* (155 Ill. 2d R. 311). We review the decision of the Electoral Board *de novo* because it involves a question of law. *Brennan v. Kolman*, 335 Ill. App. 3d 716, 719, 269 Ill. Dec. 847, 781 N.E.2d 644 (2002).

On appeal, petitioner argues that his description of the office [*1061] sought as "trustee" was sufficient because a general description of an office is presumed to refer to the full-term office unless otherwise specified. We disagree.

A description of the office sought by a candidate is generally sufficient where there is "no basis for confusion as to the office for which the nominating papers were filed." *Lewis v. Dunne*, 63 Ill. 2d 48, 53, 344 N.E.2d 443 (1976). There is no basis for confusion where, looking at the nominating papers as a whole, it is clear which position the candidate seeks. *Lewis*, 63 Ill. 2d at 53.

In *Lewis*, a candidate for appellate judge described the office he sought only as "Judge of the Appellate Court of Illinois, First Judicial District" on his statement of candidacy. [***4] *Lewis*, 63 Ill. 2d at 50. The candidate properly described the office as "Judge of the Appellate Court of Illinois, First Judicial District, to fill the vacancy created by the retirement of the Honorable Robert E. English" on his petitions for nomination. *Lewis*, 63 Ill. 2d at 49-50. The candidate's nominating papers were challenged on the basis that the statement of candidacy did not describe the specific vacancy the candidate sought. *Lewis*, 63 Ill. 2d at 50. The supreme court held that the nominating papers were valid based on two factors. First, there was "no basis for confusion as to the office for which the nominating papers were filed." *Lewis*, 63 Ill. 2d at 53. Taken as a whole, the nominating papers, of which both the statement of candidacy and the petitions for nomination are part, clearly identified the office that the candidate sought because a specific description of the office was included in the petitions for nomination. *Lewis*, 63 Ill. 2d at 53. Second, there was nothing about the statement of candidacy itself that made it necessary for the specific description of the office to be included [***5] therein. The purpose of a statement of candidacy is to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election [**857] for the office he seeks. *Lewis*, 63 Ill. 2d at 53. The general description of the office is the functional equivalent of the specific description for this purpose. *Lewis*, 63 Ill. 2d at 53. Thus, there was no

reason for the statement of candidacy to contain more than a general description of the office where other nominating papers contained the specific description.

Zapolsky v. Cook County Officers Electoral Board, 296 Ill. App. 3d 731, 231 Ill. Dec. 210, 695 N.E.2d 1329 (1998), a First District case cited by respondent, held that the failure to specify the precise office sought on petitions for nomination *per se* renders nominating papers invalid even where the specific office is identified on other nominating papers. In *Zapolsky*, there were full-term offices and a vacancy to be filled in the election. *Zapolsky*, 296 Ill. App. 3d at 732. The candidate, however, described the office she sought on her petitions for nomination only as " 'Commissioner of [***6] the [*1062] Metropolitan Water Reclamation District of Greater Chicago.' " *Zapolsky*, 296 Ill. App. 3d at 732. The candidate correctly identified the office in her statement of candidacy and economic statement as " 'Commissioner of the Metropolitan Water Reclamation District of Greater Chicago to fill the vacancy for the unexpired two (2) year term.' " *Zapolsky*, 296 Ill. App. 3d at 732. As in *Lewis*, there was no basis for confusion as to the office for which the nominating papers were filed because the statement of candidacy and economic statement sufficiently delineated that information. The court, however, held that petitions for nomination always must identify the specific vacancy sought because of their distinctive purpose. *Zapolsky*, 296 Ill. App. 3d at 734. According to the court, "[t]he apparent purpose of nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election." *Zapolsky*, 296 Ill. App. 3d at 734. The court concluded that to accomplish this purpose "[a] potential signatory to a nominating petition has the right to know the specific [***7] vacancy sought by the candidate so that the signatory may make an informed decision to sign the petition or support another candidate for the same vacancy." *Zapolsky*, 296 Ill. App. 3d at 734.

The conclusion in *Zapolsky* is questionable. *Zapolsky* premised its holding on its finding that "[t]he apparent purpose of nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election." *Zapolsky*, 296 Ill. App. 3d at 734. *Zapolsky* cited no authority for this finding. Other cases have held, more logically, that the primary purpose of the signature requirement is to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters. *Lockhart v. Cook County Officers Electoral Board*, 328 Ill. App. 3d 838, 844, 262 Ill. Dec. 968, 767 N.E.2d 428 (2002); *Huskey v. Municipal Officers Electoral Board*, 156 Ill.

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2003 Ill. App. LEXIS 563, ***; 273 Ill. Dec. 680

*App. 3d 201, 206, 108 Ill. Dec. 859, 509 N.E.2d 555 (1987); Merz v. Volberding, 94 Ill. App. 3d 1111, 1118, 50 Ill. Dec. 520, 419 N.E.2d 628 (1981); [***8] Briscoe v. Kusper, 435 F.2d 1046, 1054 (7th Cir. 1970).*

We need not decide whether to adopt the *Zapolsky* holding in the Second District, however. Unlike *Zapolsky* and unlike *Lewis*, here petitioner did not identify which of the two offices he sought on *any* [***858] of his nominating papers. A candidate's description of the office he seeks may not create "basis for confusion as to the office for which the nominating papers were filed." *Lewis*, 63 Ill. 2d at 53. In *Lewis*, the supreme court held that the failure to specifically identify the office sought in a statement of candidacy was excused where other nominating papers did so. *Lewis*, 63 Ill. 2d at 53. Here none of [***1063] the nominating papers indicate which of the two trustee offices petitioner sought. As a result, it is not clear from the nominating papers which trustee office petitioner intended to run for. This constitutes a basis for confusion as to the office for which the nominating papers were filed.

Petitioner argues that his general description of the office he sought was sufficient because nominating papers are considered filed for the full-term office unless [***9] otherwise specified. According to petitioner, only a candidate seeking to fill an office created by a vacancy need give a specific description of the office he seeks because a vacancy is "an exception to the statutory scheme." Petitioner premises this assertion on the fact that the statute provides for trustees to serve a four-year term. 65 ILCS 5/3.1--25--5 (West 2000). The trouble with this argument is that the statute also provides for trustees to serve less than a four-year term where they fill a vacancy. 65 ILCS 5/3.1--10--50(b) (West 2000). Thus, an office created by a vacancy is not "an exception to the statutory scheme" but, rather, specifically provided for by statute.

Petitioner, in essence, asks us to create a default rule that a general description of an office sought is presumed to refer to the full-term office unless otherwise specified. We have found no authority that supports such a rule. Under *Lewis*, a candidate must make clear the office that he seeks somewhere in his nominating papers. We do not find this rule unduly burdensome such that we need qualify it today. Accordingly, petitioner's nominating papers [***10] are invalid because he failed to specify which of the two trustee positions he sought.

Petitioner additionally argues that the Electoral Board was estopped to remove his name from the ballot because Lakemoor published a document listing available offices that classified both the two-year and the four-year trustee offices as "trustee." Before an estoppel against a public body can be found, it must be shown that

an affirmative act occurred on the part of the governmental body that induced substantial reliance by the litigant. *Schumann v. Kumarich*, 102 Ill. App. 3d 454, 460, 58 Ill. Dec. 157, 430 N.E.2d 99 (1981). Petitioner does not even argue that he relied on the document in failing to specify which of the two trustee positions he sought. Nor can he. The same document made clear that there were two types of trustee offices available and even admonished petitioner to consult competent legal counsel in filing his petitions for nomination. The Electoral Board was not estopped to remove petitioner's name from the ballot.

[***1064] The judgment of the circuit court of McHenry County is affirmed.

Affirmed.

KAPALA, J., concurs.

DISSENT BY: GILLERAN JOHNSON

DISSENT

JUSTICE GILLERAN JOHNSON, [***11] dissenting:

I respectfully dissent. I believe that the petitioner complied with section 7--10 of the Election Code (10 ILCS 5/7--10 (West 2000)), which requires that a candidate's nominating papers state the office that the candidate seeks.

[***859] Specifically, section 7--10 of the Election Code provides that the statement of candidacy must state the candidate's name, his political party, his place of residency, and the office he seeks. 10 ILCS 5/7--10 (West 2000). The statement of candidacy must also be notarized. 10 ILCS 5/7--10 (West 2000). Additionally, section 7--10 of the Election Code provides that a candidate's petitions for nomination be uniform in size, contain a certain number of signatures, and be fastened together in book form. 10 ILCS 5/7--10 (West 2000). Each nominating petition must state the candidate's name, his address, and the office he seeks. 10 ILCS 5/7--10 (West 2000).

In accordance with section 7--10 of the Election Code, the petitioner stated, in both his nominating petition and statement of candidacy, that he sought the office of "trustee." [***12] " That the petitioner did not designate whether he desired a four-year or two-year term did not render his description of the office insufficient. As noted above, section 7--10 of the Election Code sets out the precise form of a candidate's nominating papers. However, nowhere in section 7--10 of the Election Code does it require a candidate to designate the term of the office he desires. See 10 ILCS 5/7--10 (West 2000).

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The majority's imposition of such a requirement on a candidate that he state the length of term he desires is, in the present case, superfluous, as the term of office of a trustee is defined by statute. Particularly, the Illinois Municipal Code (65 ILCS 5/3.1--25--5 (West 2000)) (the Municipal Code) provides: "In each village incorporated under this Code, the electors of the village shall elect 6 trustees. The term of office of the trustees shall be 4 years ***."

Although the Municipal Code also provides for trustees to serve less than four years in instances where they fill a vacancy (65 ILCS 5/3.1--10--50 (West 2000)), this does not contravene the general rule that a trustee is an elected [***13] four-year position. The majority's position that there was a basis for confusion herein is therefore flawed. It was obvious that the petitioner was not seeking to fill a vacancy. The [*1065] petitioner's nominating petition and statement of candidacy clearly indicated that the petitioner was seeking the position of trustee, which by statute is defined with a four-year term. Accordingly, the majority's suggestion that there was confusion over how long a term of office the petitioner was seeking is unfounded.

Even if section 7--10 of the Election Code did require the petitioner to state the length of the term he sought, such an omission was inconsequential, and the Electoral Board should have found that the petitioner substantially complied. It is a fundamental principle that access to a place on the ballot is a substantial right and not lightly to be denied. *Nolan v. Cook County Officers Electoral Board*, 329 Ill. App. 3d 52, 55, 263 Ill. Dec. 456, 768 N.E.2d 216 (2002). The petitioner's failure to describe the position he sought more precisely was, at maximum, a minor error. A minor error in a candidate's nominating papers should not result in a candidate's removal from the [***14] ballot. *Sullivan v. County Officers Electoral Board*, 225 Ill. App. 3d 691, 693, 167 Ill. Dec. 834, 588 N.E.2d 475 (1992).

I am mindful that compliance with section 7--10 of the Election Code has been held to be mandatory and not directory. See *Bowe v. Chicago Electoral Board*, 79 Ill. 2d 469, 470, 38 Ill. Dec. 756, 404 N.E.2d 180 (1980). However, substantial compliance has been held, in some circumstances, to satisfy even certain mandatory requirements of the Election Code, including section 7--10. See *Courtney v. County Officers Electoral Board*, 314 Ill. App. 3d 870, 876, [**860] 247 Ill. Dec. 861, 732 N.E.2d 1193 (2000) (finding that the candidate had substantially complied with section 7--10 of the Election Code even though he failed to simultaneously file his nominating petitions with his statement of candidacy); *Panarese v. Hosty*, 104 Ill. App. 3d 627, 628-29, 60 Ill.

Dec. 434, 432 N.E.2d 1333 (1982) (finding that the candidate substantially complied with section 7--10 of the Election Code even though he omitted his street and number from his nominating petition); *Madden v. Schumann*, 105 Ill. App. 3d 900, 903, 61 Ill. Dec. 684, 435 N.E.2d 173 (1982) [***15] (holding that the candidate's omission of the phrase "is a registered voter" from the circulator's oath, as required by section 7--10 of the Election Code, was a technical deviation that did not warrant removal from the ballot); *Stevenson v. County Officers Electoral Board*, 58 Ill. App. 3d 24, 26, 15 Ill. Dec. 571, 373 N.E.2d 1043 (1978) (finding that the candidate's failure to number his nominating petitions consecutively, as required by section 7--10 of the Election Code, was a mere technical deficiency that did not render his nominating papers invalid).

Even *Lewis*, upon which the majority hangs its hat, establishes that a candidate can satisfy section 7--10 of the Election Code with substantial compliance. The *Lewis* court specifically held that the candidate "substantially complied" with section 7--10 of the Election Code even though he failed to describe the particular vacancy that he was seeking in his statement of candidacy. *Lewis*, 63 Ill. 2d at 53. [*1066] Although the *Lewis* court predicated its finding of substantial compliance on the fact that the candidate's nominating papers as a whole did describe the particular vacancy that the candidate [***16] was seeking, describing a particular vacancy in this case was not necessary because, as noted above, the petitioner was not seeking a vacancy. What was required, rather, was that the petitioner state the office he was seeking. This, I believe, the petitioner did.

On a final note, the provisions of the Electoral Code are designed to protect the integrity of the electoral process. *Welch v. Johnson*, 147 Ill. 2d 40, 56, 167 Ill. Dec. 989, 588 N.E.2d 1119 (1992). Furthermore, villages such as Lakemoor have a legitimate interest in regulating the number of candidates on the ballot. Yet, when access to the ballot is involved, the restriction on that access should require the least drastic measure to achieve these ends. In this case, removing the petitioner from the ballot was a drastic measure that did little to protect the integrity of the electoral process. Moreover, the Village of Lakemoor's interests in this case were far outweighed by the petitioner's right to access on the ballot and the voters' right to elect a candidate of their choice. Frank Heabler should have been listed on the ballot for the April 1, 2003, election as a candidate for trustee.

For the above [***17] reasons, I believe the Electoral Board's removal of the petitioner from the ballot was erroneous.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR THE OFFICE OF
SCHOOL BOARD TRUSTEE IN THE BUREAU, HENRY, STARK REGIONAL DISTRICT**

JON A. ZAHM,

Petitioner-Objector,

v.

DEBRA DALTON,

Respondent-Candidate.

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS
13 JAN -3 PM 4:12

VERIFIED OBJECTOR'S PETITION

INTRODUCTION

Now comes Jon A. Zahm (the "Objector"), and he states as follows:

1. The Objector resides at 14910 Osco Road, Osco, in Henry County, Osco Township Illinois, 61274, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this petition ("Petition") is that of a voter who desires that the laws governing the filing of nomination papers for the Office of School Board Trustee in the Bureau, Henry, Stark Regional District are properly complied with and that only qualified candidates, appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers (the "Nomination Papers") of Debra Dalton (the "Candidate") as a candidate for nomination to the office of School Board Trustee in the Bureau, Henry, Stark Regional District (the "Office")

to be voted on at the 9th of April, 2013 (the "Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:

4. The Candidate's nomination papers, petition sheets and statement of candidacy do not specify whether the Candidate is seeking to be elected to a full term or to fill an unexpired vacancy in the office of School Board Trustee for the Bureau, Henry, Stark Regional District. By information and belief, at the April 9, 2013 elections, 3 candidates for the office of School Board Trustee of the Bureau, Henry, Stark Regional District will be elected for a full term, and one for an unexpired 4-year vacancy, and one for an unexpired 2-year vacancy.

5. Because the Candidate does not specify whether she is seeking to fill a full term or one of the unexpired vacancies, the Candidate has not properly specified which of the offices she is seeking. Leaving the petitions blank in this regard potentially gives the candidate great advantage as to which term they circle on the form, after signatures are gathered, depending on the gender and geography of others who file for specific seats available.

6. For the reasons specified above the Candidate's nomination papers do not substantially comply with the requirements of the Illinois Election Code and therefore the Candidate's Nomination Papers are invalid.

WHEREFORE, the Objector requests a hearing on the objections stated herein, an examination by the Electoral Board of the official records relating to the matters alleged herein, a ruling that the Nomination Papers are invalid as not lawful and a ruling that the name of the Candidate Debra Dalton shall not appear on the ballot for election to the office of School Board Trustee for the Bureau, Henry, Stark Regional District.

Jon A. Zahm

The Objector Jon A. Zahm

Subscribed and sworn to before me this 3rd day of January, 2013.

Julie N. Hager

Notary Public



STATE OF ILLINOIS)
) SS.
COUNTY OF HENRY)

The undersigned, Jon A. Zahm., under oath deposes and says that he is the Objector identified in the attached Verified Objector's Petition, and that he has reviewed the allegations contained in said Petition and is familiar with the matters alleged therein and that such allegations are true to the best information available and belief.

Jon A. Zahm
Objector

Subscribed and Sworn to before me
this 3rd. day of January, 2013

Julie N. Hager
NOTARY PUBLIC



STATEMENT OF CANDIDACY

NONPARTISAN

NAME	ADDRESS-ZIP CODE	OFFICE	CITY, VILLAGE OR SPECIAL DISTRICT
Debra Dalton	26506 Angling Rd. Malden, IL 61337		

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS Debra Dalton UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

STATE OF ILLINOIS

County of Bureau)
) SS.

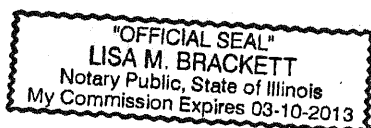
I, Debra Dalton being first duly sworn (or affirmed), say that I reside at 26506 Angling Rd in the City, Village, Unincorporated Area (circle one) of Malden (if unincorporated, list municipality that provides postal service) Zip Code 61337, in the County of Bureau, State of Illinois; that I am a qualified voter therein, that I am a candidate for Nomination/Election to the office of Regional Board of School Trustees in the _____ Name of City, Village or Special District to be voted upon at the election to be held on April 9, 2013 (date of election) and that I am legally qualified to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official ballot for Nomination/Election to such office.

RECEIVED BY

Debra Dalton
(Signature of Candidate)

Signed and sworn to (or affirmed) by Debra Dalton before me, on 12-11-12
(Name of Candidate) (insert month, day, year)

(SEAL)



Lisa M. Brackett
(Notary Public's Signature)

12 DEC 19 AM 8:47
PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS

This section will be returned to
you when the Statement is filed
with the County Clerk.

(COMPLETE BUT DO NOT DETACH)

Regional Board of School Trustees

Office or Position of Employment for which this statement is filed

(TYPE OR HAND PRINT)

Debra Dalton

Name

26506 Angling Rd.

Address

Malden

City

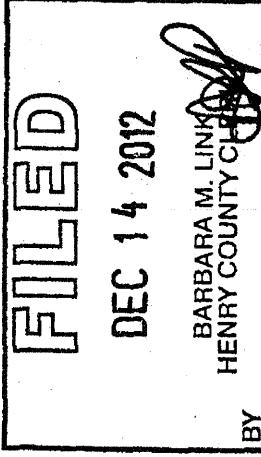
IL

State

61337

ZIP Code

Receipt is hereby acknowledged
of your Statement of Economic
Interests, filed pursuant to the
Illinois Governmental Ethics Act. The
Statement was filed on this date:



ATTACH TO PETITION

10 ILCS 5/7-10.1

Suggested
Revised July, 2004
SBE No. P-1C

LOYALTY OATH
(OPTIONAL)

United States of America

State of Illinois

SS.

I, Debra Dalton, do swear (or affirm) that I am a citizen of the United States and the State of Illinois, that I am not affiliated directly or indirectly with any communist organization or any communist front organization, or any foreign political agency, party, organization or government which advocates the overthrow of constitutional government by force or other means not permitted under the Constitution of the United States or the Constitution of this State; that I do not directly or indirectly teach or advocate the overthrow of the government of the United States or of this State or any unlawful change in the form of the governments thereof by force or any unlawful means.

Debra Dalton
(Signature of Candidate)

Signed and sworn to (or affirmed) by Debra Dalton before me,
(Name of Candidate)

on 12-11-12
(insert month, day, year)

Lisa M. Brackett
(Notary Public's Signature)

(SEAL)



**PETITION FOR NOMINATION FOR
MULTI-COUNTY REGIONAL SCHOOL TRUSTEES
TO BE FILED WITH THE STATE BOARD OF ELECTIONS**

We, the undersigned, being 50 or more of the voters qualified to vote, hereby petition that Debra Dalton who resides at 26506 Angling Road, Malden in Township (or Road District) Berlin in Bureau County, shall be a candidate for the office of **MEMBER OF THE REGIONAL BOARD OF SCHOOL TRUSTEES** of Bureau Henry Stark Region (Counties within region) full term or vacancy (circle one) to be voted for at the Consolidated Election to be held April 9, 2013 (date of election).

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

NAME (VOTER'S SIGNATURE)	STREET ADDRESS OR RR NUMBER	CITY, TOWN OR VILLAGE	IL	COUNTY
1 <u>Capette Dalton</u>	<u>33919 2400 N.</u>	<u>La Moille</u>	<u>IL</u>	<u>Bureau</u>
2 <u>Scott Kuff</u>	<u>316 W. First St.</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>
3 <u>[Signature]</u>	<u>1235 Sherwood Glen Dr.</u>	<u>Princeton</u>	<u>IL</u>	<u>Bureau</u>
4 <u>Gina Ann</u>	<u>606 West Court St</u>	<u>Cambridge</u>	<u>IL</u>	<u>Henry</u>
5 <u>[Signature]</u>	<u>525 NW 3rd Ave</u>	<u>Galva</u>	<u>IL</u>	<u>Henry</u>
6 <u>Jerry Kestel</u>	<u>8160 N. Wyoming Rd.</u>	<u>Wyoming</u>	<u>IL</u>	<u>Stark</u>
7 <u>[Signature]</u>	<u>15890 E 1850</u>	<u>Stanhope</u>	<u>IL</u>	<u>Henry</u>
8 <u>Jonda Kestel</u>	<u>713 Hawthorne Ct</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>
9 <u>William B Kestel</u>	<u>713 Hawthorne Ct</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>
10 <u>Samuel Kestel</u>	<u>787 Hawthorne Ct</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>
11 <u>Joyce R. Kestel</u>	<u>727 Hawthorne Ct</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>
12 <u>[Signature]</u>	<u>714 Hawthorne Ct.</u>	<u>Geneseo</u>	<u>IL</u>	<u>Henry</u>

State of ILLINOIS

County of HENRY

SS.

I, William Kestel (Circulator's Name) do hereby certify that I reside at 713 Hawthorne Ct in the City/Village/Unincorporated Area (circle one) of Geneseo (if unincorporated, list municipality that provides postal service) (Zip Code) 61254 County of HENRY State of ILLINOIS that I am 18 years of age or older, that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence, not more than 90 days preceding the last day for filing of the petitions and are genuine and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters of the political division in which the candidate is seeking elective office, and that their respective residences are correctly stated, as above set forth.

Signed (or affirmed) by

WILLIAM KESTEL
(Name of Circulator)

William Kestel
(Circulator's Signature)
before me, on 11-14-12
(insert month, day, year)

(SEAL)

MAIL

Lisa M. Brackett
(Notary Public's Signature)

SHEET NO. 1



12 DEC 19 AM 8:47
PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS

Harrington, Bernadette

From: Jon Zahm [goliathslayers@gmail.com]
Sent: Monday, January 21, 2013 2:48 PM
To: Herman, David
Cc: jon@thegoliathslayer.com; ddalton@hihart.net; Harrington, Bernadette; Sandvoss, Steve
Subject: Re: Zahm v. Dalton, 13 SOEB CE 104

I move for summary judgment on this case to not place the candidate objected to from the ballot as the law and precedent is very clear.

Article 10 of the Election Code governs the making of nominations in non-partisan and independent races. Section 10-4 governs the form of the petitions and Section 10-5 governs the form of the statement of candidacy and the filing of the statement of economic interest. Section 10-4 requires that the nominating petitions heading give "the information as to the name of the candidate or candidates in whose behalf such petition is signed; the office; the party; place of residence; and such other information or wording as required to make same valid..." Section 10-5 requires that the statement of candidacy shall contain "the address of such candidate, shall state that the candidate is qualified for the office specified..."

The question that needs to be addressed is whether the failure of the candidates to state sufficiently the office invalidates their nominating papers. The First District Appellate Court addressed the issue of voter confusion because of the improper designation of the office by the candidate in *Zapolsky v. Cook County Officers Electoral Bd.*, 296 Ill.App.3d 731 (1st Dist. 1998). In that case, the appellate court held that the failure to specify on a nominating petition sheet whether the candidate was seeking a full or partial term invalidates the petitions when there are both full and partial terms of the same office on the ballot in the same election. When both full and partial terms for the same office are on the ballot in the same election, the failure to specify on petitions which term the candidate is seeking fails to strictly or substantially comply with Election Code provisions, and causes a basis for confusion to the voters as to which of the possible offices this candidate is seeking. The court went on to say that where there are numerous vacancies in a district that are up for election, failing to specify the office sought is fatal. The court determined that:

The apparent purpose of the nominating petitions signed by the voters is to expand the informed participation of members of the respective parties in their primary election. Nominating petitions should be free from a "basis for confusion" as to the office for which they are filed. A potential signatory to a nominating petition has the right to know the specific vacancy sought by a candidate so that the signatory may make an informed decision to sign the petition of support another candidate for the same vacancy. *Zapolsky*, at 735.

**Respectfully,
Jon A. Zahm**

On Fri, Jan 18, 2013 at 5:39 PM, Herman, David <dherman@giffinwinning.com> wrote:

Pursuant to the case management conference held today relating to the pending objection to your nomination papers filed by Mr. Zahm, I order the following:

1. This matter involves a legal dispute as to the legal sufficiency of the nominations filed by the Candidate and there is no need to hold an evidentiary hearing in this matter as acknowledged by the parties present during today's pre-hearing conference (in person and by phone). Accordingly, no evidentiary hearing will be held in this matter and the objection will be ruled upon based on the filings of the parties.
2. The deadlines set forth in the Rules of Procedure adopted by the State Board of Elections Sitting as the Duly Constituted State Officers Electoral Board and published on the State Board of Elections website must be strictly adhered to by the parties.
 - a. Candidate's Motion to Strike and/or Dismiss or other similar motion (and memorandum of law) and Objector's Motion for Summary Judgment or similar motion (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal

counsel (all email addresses are in the to and from line of this email) on or before 5:00 p.m. central time on Monday, January 21, 2013.

b. Objector's Response to Candidate's filing (and memorandum of law) and Candidate's Response to Objector's filing (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 5:00 p.m. central time on Tuesday, January 22, 2013.

c. Objector's Reply to Candidate's Response (and memorandum of law) and Candidate's Reply to Objector's Response (and memorandum of law), if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 5:00 p.m. central time on Wednesday, January 22, 2013.

3. The next hearing before the State Officers Electoral Board is set for Wednesday, January 30, 2013 at 3:00 p.m. central time at the State Board of Elections Offices (in Chicago and Springfield). At that time the State Officers Electoral Board will consider the Hearing Officer's Report and Recommendation on the pending objection to your candidacy.

4. The parties Exceptions to the Report of the Hearing Officer, if any, must be emailed to the Hearing Officer, opposing party, and board legal counsel on or before 3:00 p.m. central time on Tuesday, January 29, 2013.

5. Attached are the entries of appearances filed by each party at the conference held today.

6. Acknowledge receipt of this email order.

Dated: 1/18/2013

David Herman

David A. Herman
Attorney
Giffin, Winning, Cohen & Bodewes, P.C.
One West Old State Capitol Plaza, Suite 600
Springfield, IL 62701

Phone (217) 525-1571

Harrington, Bernadette

From: Jon Zahm [goliathslayers@gmail.com]
Sent: Tuesday, January 22, 2013 4:53 PM
To: Herman, David
Cc: jon@thegoliathslayer.com; ddalton@hihart.net; Harrington, Bernadette; Sandvoss, Steve
Subject: Re: Zahm v. Dalton, 13 SOEB CE 104

Dear mr. Herman, with response to ms. Dalton's response... In Jackson v. Oglivie, a landmark 1970 Illinois election case, the court decided that having specific and detailed compliance requirements to get on the ballot do not violate the constitutional rights of candidates or voters. ms. dalton expressed concern about voter's lack of choice. If she was running for the 4 year unexpired term she may have been the only one doing so, hence no voter choice for that election either. Lastly, regardless of what she told voters, by not indicating the term on the petitions at the time of signing, it could be changed later to get the best match up depending on who else filed. Not that she would do this but a less than ethical candidate could. Thank you Jon Zahm

Sent from my iPhone

On Jan 21, 2013, at 2:48 PM, Jon Zahm <goliathslayers@gmail.com> wrote:

I move for summary judgment on this case to not place the candidate objected to from the ballot as the law and precedent is very clear.

Article 10 of the Election Code governs the making of nominations in non-partisan and independent races. Section 10-4 governs the form of the petitions and Section 10-5 governs the form of the statement of candidacy and the filing of the statement of economic interest. Section 10-4 requires that the nominating petitions heading give "the information as to the name of the candidate or candidates in whose behalf such petition is signed; the office; the party; place of residence; and such other information or wording as required to make same valid..." Section 10-5 requires that the statement of candidacy shall contain "the address of such candidate, shall state that the candidate is qualified for the office specified..."

The question that needs to be addressed is whether the failure of the candidates to state sufficiently the office invalidates their nominating papers. The First District Appellate Court addressed the issue of voter confusion because of the improper designation of the office by the candidate in Zapolsky v. Cook County Officers Electoral Bd., 296 Ill.App.3d 731 (1st Dist. 1998). In that case, the appellate court held that the failure to specify on a nominating petition sheet whether the candidate was seeking a full or partial term invalidates the petitions when there are both full and partial terms of the same office on the ballot in the same election. When both full and partial terms for the same office are on the ballot in the same election, the failure to specify on petitions which term the candidate is seeking fails to strictly or substantially comply with Election Code provisions, and causes a basis for confusion to the voters as to which of the possible offices this candidate is seeking. The court went on to say that where there are numerous vacancies in a district that are up for election, failing to specify the office sought is fatal. The court determined that:

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**Respectfully,
Jon A. Zahm**

On Fri, Jan 18, 2013 at 5:39 PM, Herman, David <dherman@giffinwinning.com> wrote:

Pursuant to the case management conference held today relating to the pending objection to your nomination papers filed by Mr. Zahm, I order the following:

1. This matter involves a legal dispute as to the legal sufficiency of the nominations filed by the Candidate and there is no need to hold an evidentiary hearing in this

Harrington, Bernadette

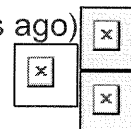
From: Jon Zahm [goliathslayers@gmail.com]
Sent: Thursday, January 24, 2013 4:48 PM
To: Herman, David
Cc: ddalton@hihart.net; Harrington, Bernadette; Sandvoss, Steve
Subject: Re: Zahm v. Dalton, 13 SOEB CE 104

Dear Mr. Herman et al,

Here is the copy of Ms. Dalton's response that I was offering a rebuttal to:

ddalton@hihart.net

Jan 21 (3 days ago)



to dherman, jon



Mr. Herman,

As Mr. Zahm has stated an error was made in not marking on my petition forms that I was running to fill a vacancy. However I will state that I was fair and honest in my explanations to all persons on face-to-face gathering of signatures on my petitions. I was forthcoming with each person in explaining that I had been appointed this year to a vacancy on the Regional Board of School Trustees and that I was running as a candidate to complete the 4 years of this term. I believe the people signing my petitions had full understanding of the terms of my election. I believe throwing out the candidacy of all 5 candidates may also subvert the will of the people by not giving them any choice of candidates during the election. I will abide by the findings of the State Board of Elections.

Respectfully submitted,
Debra Dalton

On Thu, Jan 24, 2013 at 2:29 PM, Herman, David <dherman@giffinwinning.com> wrote:

Mr. Zahm and Ms. Dalton,

In Mr. Zahm's email, he references a reply to a response filed by Ms. Dalton, can one of you please provide me with a copy of Ms. Dalton's response. I am unable to locate Ms. Dalton's response. Thank you.

David A. Herman

Attorney
Giffin, Winning, Cohen & Bodewes, P.C.
One West Old State Capitol Plaza, Suite 600
Springfield, IL 62701

Phone [\(217\) 525-1571](tel:(217)525-1571)

Cell [\(217\)-502-3024](tel:(217)502-3024)

Fax [\(217\) 525-1710](tel:(217)525-1710)

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

In the Matter Of:)
)
JeanMarie Hajer-O'Connor,)
Complainant(s),)
Vs.) 13 CD 003
)
Committee to Elect Robert Lovero ,)
Respondent(s).)

ORDER

TO: JeanMarie Hajer-O'Connor Committee to Elect Robert Lovero
1910 S Elmwood Ave 6536 W Cermak Rd
Berwyn, IL 60402 Berwyn, IL 60402

This matter coming to be heard this 22th day of January, 2013, following a Closed Preliminary Hearing of a Complaint filed pursuant to “An Act to Regulate Campaign Finance” (Illinois compiled States, 10 ILCS 5/9-1 *et. seq.*, herein referred to as the “Act”), alleging that the respondent(s) violated 10 ILCS 5/9-10, and 5/9-11 in that the Respondent has failed to report contributions and expenditures on a quarterly report, and the State Board of Elections having read the report of the Hearing Officer and reading the recommendation of the General Counsel and now being fully advised in the premises,

THE BOARD FINDS:

1. In regards to the allegations that the Respondent violated sections 5/9-10 and 5/9-11, the complaint was filed on justifiable grounds.

IT IS HERBY ORDERED:

1. The recommendation of the Hearing Officer and General Counsel is adopted; and
2. That a Public Hearing be conducted in the matter; and
3. The effective date of this Order is January 23, 2013.

DATED: 1/23/2013

Walter C. Gifford

William M McGuffage, Chairman



FORM

D-4

COMPLAINT FOR VIOLATION OF
THE CAMPAIGN DISCLOSURE ACT

COMPLAINANT NAME, ADDRESS AND TELEPHONE NUMBER:

Jeanmarie Hajer-O'Connor

1910 S. Elmwood Avenue

vs. Berwyn, IL 60402

No. 13 40003

NAME AND ADDRESS OF RESPONDENT:

Committee to Elect Robert Lovero

6536 W. Cermak Road

Berwyn, IL 60402

CHICAGO
2013 JAN -9 AM 10:02
STATE BOARD OF ELECTIONS

SECTION 1. HAS RESPONDENT FILED A STATEMENT OF ORGANIZATION AS A POLITICAL COMMITTEE WITH THE STATE BOARD OF ELECTIONS ? ☒ Yes ☐ No

SECTION 2. STATUTORY PROVISIONS: STATE THE PORTIONS OF THE CAMPAIGN DISCLOSURE ACT (ARTICLE 9, ELECTION CODE) THAT HAVE BEEN VIOLATED. (USE ADDITIONAL PLAIN SHEETS IF NECESSARY AND REFER TO THIS SECTION.)
10 ILCS 5/9-10 & 10 ILCS 5/9-11

SECTION 3. STATE THE NATURE OF THE OFFENSE(s) OR VIOLATION(s), IF APPLICABLE. (USE ADDITIONAL PLAIN SHEETS IF NECESSARY AND REFER TO THIS SECTION.)

Committee to Elect Robert Lovero held a golf outing fund raiser during August 2012.

D-2 was filed and stated no contributions were received nor any expenses.

Other committees documented transfer/expenditure of funds to Committee to Elect Robert Lovero for golf out.

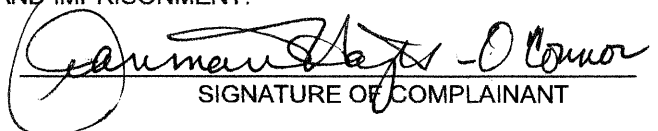
SECTION 4. ATTACH ALL STATEMENTS, SCHEDULES, OR OTHER DOCUMENTS REFERRING TO THIS COMPLAINT.

VERIFICATION

I DECLARE THAT THIS COMPLAINT (INCLUDING ANY ACCOMPANYING SCHEDULES AND STATEMENTS) HAS BEEN EXAMINED BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS A TRUE AND CORRECT COMPLAINT AS REQUIRED BY ARTICLE 9 OF THE ELECTION CODE. I UNDERSTAND THAT THE PENALTY FOR WILLFULLY FILING A FALSE COMPLAINT SHALL BE A FINE NOT TO EXCEED \$500 OR IMPRISONMENT IN A PENAL INSTITUTION OTHER THAN THE PENITENTIARY NOT TO EXCEED 6 MONTHS, OR BOTH FINE AND IMPRISONMENT.

January 6, 2013

DATE


SIGNATURE OF COMPLAINANT

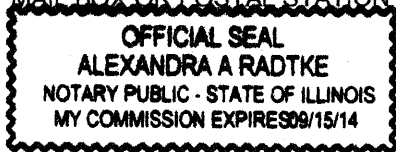
(IF COMPLAINANT IS A CORPORATION THEN
VERIFICATION MUST BE SIGNED BY AN AUTHORIZED
OFFICER AND ATTESTED TO BY THE SECRETARY)

PROOF OF SERVICE

I, Jeanmarie Hajer-O'Connor HEREBY SWEAR OR AFFIRM THAT I SERVED A COPY OF THE FOREGOING COMPLAINT UPON THE FOLLOWING:

a) BY PERSONALLY DELIVERING THE SAME ON THE ____ DAY OF _____, 20__ AT ____ O'CLOCK ____ M.
(NAME AND TITLE OF PERSON OR IF NAME IS UNKNOWN A PHYSICAL DESCRIPTION INCLUDING RACE, SEX, AND APPROXIMATE AGE). OR:

b) BY PLACING A COPY THEREOF IN THE UNITED STATES POSTAL SERVICES, PROPER POSTAGE PREPAID, TO THE ABOVE INDICATED ADDRESSES, ON THE 7th DAY OF JANUARY 2013, AT THE MAIL BOX OR POSTAL STATION LOCATED AT: 6625 CERMAK RD, BERYN, IL



Jeanmarie Hajer-O'Connor
SIGNATURE OF COMPLAINANT OR AGENT

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 7th DAY OF January, 2013

Alexandra A Radtke
NOTARY PUBLIC

INSTRUCTIONS

1. THIS FORM IS USED TO FILE COMPLAINTS FOR VIOLATIONS ARISING OUT OF AN ACT TO REGULATE CAMPAIGN FINANCING (ILLINOIS REVISED STATUTES, CHAPTER 46, ART. 9-1 ET SEQ.). SEE RULES AND REGULATIONS OF THE STATE BOARD OF ELECTIONS FOR THE FILING AND HEARING OF COMPLAINTS.
2. THE FILING AND HEARING OF COMPLAINTS ARE GOVERNED BY RULES AND REGULATIONS ADOPTED BY THE BOARD. IF A COMPLAINT IS FILED WITHIN 60 DAYS PRIOR TO THE DATE OF AN ELECTION IN REFERENCE TO WHICH THE COMPLAINT IS FILED, THE COMPLAINANT MUST SERVE A COPY OF THE COMPLAINT UPON ALL RESPONDENTS PRIOR TO THE TIME OF FILING. COPIES OF THE RULES AND REGULATIONS ARE AVAILABLE UPON REQUEST.
3. COMPLAINTS MUST BE FILED BY MAIL OR IN PERSON AT EITHER OF THE FOLLOWING LOCATIONS:

STATE BOARD OF ELECTIONS
2329 S MACARTHUR BLVD
SPRINGFIELD, ILLINOIS 62704-4503

STATE BOARD OF ELECTIONS
STE 14-100
100 W RANDOLPH ST
CHICAGO, IL 60601-3232

FORM

D-2

REPORT OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

Quarterly Report

FOR OFFICE USE ONLY
IDENTIFICATION NO.

19202

Cmte to Elect Robert J Lovero
6536 W Cermak Rd
Berwyn, IL 60402-2324

FILED
10/15/2012 9:52:38 PM

REPORTING PERIOD 7/1/2012 thru 9/30/2012	CASH AVAILABLE AT THE BEGINNING OF THE REPORTING PERIOD \$75,728.70	SECTION B - EXPENDITURES	
SECTION A - RECEIPTS			
1. Individual Contributions:		6. Transfers Out:	
a. Itemized (from Schedule A)	\$ 0.00	a. Itemized (from Schedule B)	0.00
b. Not-Itemized.....	\$ 0.00	b. Not-Itemized.....	0.00
2. Transfers In:		7. Loans made:	
a. Itemized (from Schedule A)	\$ 0.00	a. Itemized (from Schedule B)	0.00
b. Not-Itemized.....	\$ 0.00	b. Not-Itemized.....	0.00
3. Loans Received:		8. Expenditures:	
a. Itemized (from Schedule A)	\$ 0.00	a. Itemized (from Schedule B)	\$ 0.00
b. Not-Itemized.....	\$ 0.00	b. Not-Itemized.....	\$ 0.00
4. Other Receipts:		9. Independent Expenditures:	
a. Itemized (from Schedule A)	\$ 0.00	a. Itemized (from Schedule B)	\$ 0.00
b. Not-Itemized.....	\$ 0.00	b. Not-Itemized.....	\$ 0.00
TOTAL RECEIPTS (1-4).....	\$ 0.00	TOTAL EXPENDITURES (6-9)..	\$ 0.00
5. In-Kind Contributions:		SECTION C - DEBTS AND OBLIGATIONS	
a. Itemized (from Schedule I)	\$ 0.00	10. a. Itemized (from Schedule C)...	\$ 0.00
b. Not-Itemized.....	\$ 0.00	b. Not-Itemized.....	\$ 0.00
TOTAL IN-KIND.....	\$ 0.00	TOTAL DEBTS AND OBLIGATIONS	\$ 0.00
Name and address of person submitting this report <u>if other</u> <u>than</u> the committee's candidate or treasurer:		SECTION D - CASH BALANCE	
		Funds available at the beginning	\$ 75,728.70
		of the reporting period.....	
		Total Receipts (Section A).....	\$ 0.00
		Subtotal.....	\$ 75,728.70
		Total Expenditures (Section B).....	\$ 0.00
		Funds available at the close of	\$ 75,728.70
		the reporting period.....	

		Investment Total.....	\$ 0.00

VERIFICATION

I DECLARE THAT THIS QUARTERLY REPORT OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES (INCLUDING ACCOMPANYING SCHEDULES AND STATEMENTS) HAS BEEN EXAMINED BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS A TRUE, CORRECT AND COMPLETE REPORT AS REQUIRED BY ARTICLE 9 OF THE ELECTION CODE. I UNDERSTAND THAT WILLFULLY FILING A FALSE OR INCOMPLETE REPORT IS SUBJECT TO A CIVIL PENALTY OF AT LEAST \$1001 AND UP TO \$5000.

Robert Lovero

10/15/2012 9:52:38PM

SIGNATURE OF TREASURER OR CANDIDATE

DATE

Filed Electronically

COMMITTEE TO ELECT ROBERT J. LAVERO 2140 S OAK PARK AVE BERWYN, IL 60402	\$1,000.008/15/2012 10/5/2012	Transfer Out Local 705 Teamsters Political Action Committee B	Contribution COMMITTEE TO ELECT ROBERT J. LAVERO	
Committee To Elect Robert J. Lovero Cermak Road Berwyn, IL 60402	\$1,000.008/11/2012 10/8/2012	Transfer Out Pachous Campaign Fund	Contribution Committee To Elect Robert J. Lovero	
Committee to Elect Robert J. Lovero 6536 W. Cermak Berwyn, IL 60402	\$200.009/6/2012 10/15/2012	Transfer Out Friends of Tabares	Contribution Committee to Elect Robert J. Lovero	
Committee to Elect Robert J. Lovero 2140 S. Oak Park Ave Berwyn, IL 60402	\$1,000.007/2/2012 10/15/2012	Transfer Out SEIU Local 73 Bi-Partisan PAC	Contribution Committee to Elect Robert J. Lovero	

Received By	Amount	Report Received Date	Expended By	Purpose/Beneficiary	Candidate Office - Name District	Supporting/Opposing
Committee To Elect Robert J. Lovero Cermak Road Berwyn, IL 60402	\$1,000.008/11/2012	10/8/2012	Transfer Out Pechous Campaign Fund	Contribution Committee To Elect Robert J. Lovero		
Committee to Elect Robert J. Lovero 6536 W. Cermak Berwyn, IL 60402	\$200.009/6/2012	10/15/2012	Transfer Out Friends of Tabares	Contribution Committee to Elect Robert J. Lovero		
Committee to Elect Robert J. Lovero 2140 S. Oak Park Ave Berwyn, IL 60402	\$1,000.007/2/2012	10/15/2012	Transfer Out SEIU Local 73 Bi-Partisan PAC	Contribution Committee to Elect Robert J. Lovero		
Committee to Elect Roberto J. Lovero 6536 West Cermak Road Berwyn, IL 60402	\$1,000.008/23/2012	10/15/2012	Transfer Out Vanguard Health Management IL PAC	Contribution Committee to Elect Roberto J. Lovero		